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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Final report submitted by Mr. Danilo Türk, Special Rapporteur

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Introduction

1. In its resolution 1991/27 the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Special Rapporteur on the realization of economic, social and cultural rights to submit his final report to the Sub-Commission at its forty-fourth session. It was also suggested that the Special Rapporteur hold further consultations with the specialized agencies of the United Nations and with the international financial institutions in order to prepare for a consolidated set of recommendations which should serve as a broad basis for activities following the completion of the final report.

2. The present report is the last in a series of four which the Special Rapporteur has prepared during the past three years at the request of the Sub-Commission. The Special Rapporteur wishes to make clear that the successive reports should be considered as a whole and that he has not revised his opinion on any of the information contained in the previous reports. There follows a summary of these reports to allow for an easy understanding of the complete study on the realization of economic, social and cultural rights.

3. The preliminary report (E/CN.4/Sub.2/1989/19) dealt, inter alia, with conceptual issues, such as the indivisibility and the interdependence of all human rights; with problems in the realization of economic, social and cultural rights at the national level, such as the effect of structural adjustment programmes and extreme poverty; with areas of cooperation with specialized agencies in the realization of economic, social and cultural rights; as well as with the impact of activities of the international financial institutions on the realization of these rights. To address the latter, the Special Rapporteur suggested the development of a meaningful dialogue with the international financial institutions.

4. The first progress report (E/CN.4/Sub.2/1990/19) mainly dealt with social and economic indicators and the role they could play in assuring the realization of economic, social and cultural rights. It contained an overview of the use of indicators by various agencies and organs of the United Nations. Suggestions were offered as to which indicators would be relevant for use in the field of economic, social and cultural rights. The Special Rapporteur recommended that the Secretary-General should be requested to organize a seminar for discussion of appropriate indicators to measure achievements in the realization of economic, social and cultural rights. On the subject of extreme poverty, the Special Rapporteur recommended that another special rapporteur be appointed to examine the question of extreme poverty and exclusion from society in greater depth.

5. The second progress report (E/CN.4/Sub.2/1991/17) concentrated on the effects of structural adjustment on economic, social and cultural rights and on the role of the international financial institutions, notably the World Bank and the International Monetary Fund (IMF), in the realization of these rights. For this purpose, the Special Rapporteur had ample discussions with officials at the headquarters of the World Bank and IMF, in January 1991. In his report, the Special Rapporteur focussed particularly on the evolution which was taking place in the policies of the World Bank and IMF and on those elements which, in his view, should be strengthened in the future

to make the policies of these institutions more comprehensive and beneficial to the realization of economic, social and cultural rights. He summarized the elements of the policies of the World Bank and IMF in a manner which would enable the United Nations human rights bodies to consider their potential role in the preparation, realization and evaluation of these policies. According to the Special Rapporteur, it would seem to be productive and, indeed necessary, to develop a cooperative approach and, later, perhaps a cooperative framework which would bring together technical (economic and financial) concerns and concerns relating to the realization of economic, social and cultural rights. In addition, the Special Rapporteur gave an undate of the discussion on indicators, particularly in the light of the Human Development Report published by the United Nations Development Programme.

6. The present report consists of five chapters, which are interrelated and should be read together. Chapter 1 reflects on the need for a comprehensive approach towards human rights and the strengthening of economic, social and cultural rights. Chapter 2 deals extensively with the barriers which obstruct the realization of these rights for hundred of millions of people. In chapter 3, the role of the international financial institutions is further explored, while chapter 4 provides a reflection on the need for new approaches to contribute to a better realization of economic, social and cultural rights. Lastly, chapter 5 contains a consolidated set of recommendations which could, in the opinion of the Special Rapporteur, help the Sub-Commission to develop further its approach towards the issues of realization of economic, social and cultural rights.

7. As emphasized at the outset, this final report summarizes the main conclusions and recommendations arrived at during the realization of the mandate entrusted to the Special Rapporteur. The analytical parts of the report which are presented in the earlier documents are not repeated here in extenso. Therefore it is suggested that readers who are interested in the details consult, along with the final report, the preliminary report and the two progress reports presented to the Sub-Commission for consideration in the preceding years.

I. THE NEED FOR A COMPREHENSIVE APPROACH TOWARDS HUMAN RIGHTS AND FOR STRENGTHENING ECONOMIC, SOCIAL AND CULTURAL RIGHTS: SOME GENERAL REFLECTIONS

8. Before entering upon the question of the realization of economic, social and cultural rights, which is the main subject of this report, it is necessary to make some remarks regarding the interpretation of human rights in general. This seems particularly necessary since the time during which this final report was prepared has been characterized by profound social and political changes in the world. In the opinion of the Special Rapporteur, these changes considerably enhance the importance of economic, social and cultural rights.

9. An additional reason for these general remarks is that the discourse and action relating to human rights, including that within the United Nations has been characterized by a dichotomy, expressed most clearly in the subsequent division into two Covenants of the rights originally embodied in the Universal Declaration of Human Rights. This division has been based on profound consideration and has always significantly influenced international activity in the field of human rights.

10. However, interpretations of causes for this division are not uniform. In the opinion of one author:

> "Western states fought for, and obtained, a division into two covenants, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The two Covenants recognize the <u>difference in the character of rights</u> in various subtle ways. For example, the Covenant on Civil and Political Rights is drafted in terms of the individual's rights: e.g., 'Every human being has the inherent right to life'; 'No one shall be held in slavery'; 'All persons shall be equal before the courts and tribunals'. The Covenant on Economic, Social and Cultural Rights, on the other hand, speaks only to the States, not the individual: 'The States Parties to the present Covenant recognize the right to work'; 'The States Parties ... undertake to ensure the right of everyone to form trade unions'; 'The States Parties recognize the right of everyone to education'. There was a wide agreement and clear recognition that the means required to induce compliance with socio-economic undertakings were different from those required for civil-political rights." 1/ (Emphasis added).

11. The quoted passage illustrates one of the traditional approaches to the question of the difference between two main groups of human rights. The question of "difference in the character of rights" is interesting and merits further discussion. It can be seen from the quotation above that two out of three mentioned rights are formulated in terms of the individual's rights (the right to form trade unions and the right of everyone to education). Some other rights from this category are also phrased as individual's rights: the right of everyone to the enjoyment of just and favourable conditions of work, the right of everyone to social security, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right of everyone to take part in cultural life, to enjoy the benefits of

scientific progress and its application and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

12. Provisions concerning States action (States either recognize or undertake to ensure the rights, etc.) regarding the established rights of everyone (i.e., of the individual's rights) speak rather of the duties of States vis-à-vis certain rights (the nature of these duties varies) than of the nature of the rights themselves. In most cases, the rights involved require positive action by States rather than, as in the case of the majority of civil and political rights, mere recognition of individual's rights and corresponding non-interference by the State. The question here is whether the difference in the nature of the corresponding State duties influences the very nature of the right involved or whether it only relates to the mode of implementation of this right. In contrast with the opinion quoted above, another author expressed the following opinion:

> "Although the General Assembly decided upon adoption of two distinct Covenants ... it did so essentially because of the different nature of the implementing measures which would generally be involved, and not so as to imply any divisibility or hierarchy among the rights concerned." 2/ (Emphasis added).

13. This seemingly theoretical difference of opinion has a profound conceptual basis and an important bearing upon the implementation of economic, social and cultural rights. It has been expressed in various ways in United Nations forums and it is reflected in a number of United Nations documents relating to human rights. The question involved can, in fact, be divided into three subquestions:

(a) How real is the difference in nature between civil and political rights on the one hand and economic, social and cultural rights on the other hand?

(b) Is there a heirarchy between these two groups of rights?

(c) Which specific features characterize the legally defined means of implementation of economic, social and cultural rights?

14. In the present report a few remarks will be made about subquestion (b) on the hierarchy of rights and (c) on the means of implementation of economic, social and cultural rights. This seems to be necessary given the history of the United Nations in dealing with human rights and the relevance of this question (and answers thereto) for determining the approach to be taken towards the realization of economic, social and cultural rights.

15. Theories of human rights as natural rights and the practical approaches based upon such theories gave preference to civil and political rights and considered them as being of primary importance. This approach largely characterized what was called "the western doctrine of human rights" 3/ and was described as proceeding from the assumption that:

> "Although it is not really possible to rank human rights in order of preference, civil and political rights appear to be of primary importance ..." 4/

On the other hand, however, up until the mid-1980s, the preference of socialist States and of most developing States was clearly for economic, social and cultural rights. 5/

16. These divisions found their expression in a number of United Nations documents. From the late 1960s until the mid-1980s the view of the majority of the members of the United Nations was, at the rhetorical level at least, that it was necessary to give a certain priority to economic, social and cultural rights which were defined in a number of documents as a condition for the full realization of civil and political rights. This approach was most clearly expressed in the Proclamation of Teheran:

> "13. Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international development policies of economic and social development."

17. This type of approach also influenced General Assembly resolution 32/130 of 16 December 1977 and subsequent resolutions entitled "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms". There seems therefore to have been a consensus among the majority of the members of the United Nations in favour of considering economic, social and cultural rights as having priority in the "hierarchy" of rights over civil and political rights.

18. There have been both practical (economic and political) and ideological and philosophical reasons for the approach which gives priority (at the level of declarations, at least) to economic, social and cultural rights. 6/ Economic, social and cultural rights were seen primarily as something requiring State action, i.e., a "strong State", and therefore these rights were seen as contributing to the "building-up of State structures". This convergence of two interests of the majority of members of the United Nations (interest in strong State power and interest in legitimizing this by reference to the role of the State in the realization of economic, social and cultural rights) had an important bearing upon much of the United Nations debate on human rights.

19. The approaches outlined above have started to change, particularly since the mid-1980s. While it continues to be recognized that action by the State is necessary for the implementation of economic, social and cultural rights, which, in turn, creates the conditions for the full realization of civil and political rights, it has also become increasingly recognized that, if the State is to fulfill this task, the people should be able to control and govern the State, which is only possible if civil and political rights are respected. Strong reliance on the State as the guarantor and provider of rights, however necessary for the realization of economic, social and cultural

rights, has in many cases proved to be an illusion. State power is adequately used ("adequately" meaning also with regard to the realization of economic, social and cultual rights) in conditions of full respect for and observance of civil and political rights which give people the possibility of controlling and governing the State. The realization of civil and political rights and the realization of economic, social and cultural rights are, in fact, parts of a single whole.

20. This somewhat simplified schema is made in an attempt to point out the changing attitudes which are reflected both in United Nations documents and in the actual practice of States.

21. As regards United Nations documents mention should be made of the Declaration On the Right to Development adopted in 1986 (General Assembly resolution 41/128). Article 6, paragraph 2 of the Declaration provides:

> "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights."

22. The Declaration, which represents one of the major recent initiatives of developing countries in United Nations activities relating to human rights, makes no reference to the idea of the priority to be given to economic, social and cultural rights. Thus, it represents a departure from the approach taken in the Proclamation of Teheran. Moreover, in its tenth preambular paragraph we find a phrase which puts the idea of the indivisibility and interdependence of human rights in a specific and clear light by emphasing that:

> "the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms."

This wording, which clearly rejects any idea of giving preference to either of the two groups of rights, reflects a change in attitude within a group of States that have been active supporters of economic, social and cultural rights.

23. Changes which have taken place in former socialist States 7/ and which have influenced the attitudes of a number of developing countries have also contributed to a different approach towards the two groups of rights. In the former socialist States increased emphasis is now placed on freedom of expression, changes in the regulation of movement, expanded freedom of assembly and of asociation and, above all, on pluralistic elections as the main expression of the right of everyone to take part in government. This type of change testifies to a very real change in practically all the former socialist States. The process has reached a stage at which the earlier interest of these States in economic and social rights has almost completely disappeared and political support for these rights in international forums has diminished considerably. While it remains to be seen whether this change in attitude towards economic, social and cultural rights is permanent or temporary, it is clear that this change strengthened the hierarchization of human rights in favour of civil and political rights.

24. The idea of giving preference to civil and political rights is expressed differently from that of hierarchization in favour of economic, social and cultural rights and it is based on legal argument. The traditional western approach to human rights not only favoured the values embodied in civil and political rights but also the fact that these rights, as a rule, more easily lend themselves to precise legal regulation. The traditional "western" approach was "International treaties laying down obligations in the field of human rights should be as clear and precise as possible". 8/

25. It is interesting, though, that the critique of the alleged vagueness of formulation of economic, social and cultural rights was not until recently accompanied by an effort to devise more precise rules or a clearer interpretation of economic, social and cultural rights. There are, of course, exceptions to this - essentially those related to International Labour Organisation (ILO) conventions and standards. However, the areas of economic, social and cultural rights not covered by ILO standards seem to have been largely neglected by commentators.

26. The recent political and social changes in the former socialist countries have created a situation in which the political and ideological considerations which influenced much of the earlier reasoning on the primacy of economic, social and cultural rights have become obsolete. However, the real importance of economic, social and cultural rights remains unchanged. In the opinion of the Special Rapporteur, this is precisely the time when a unified and balanced approach should be sought in the interpretation of the relationship between the two major sets of human rights. The conceptual basis of such an approach is already there - it has always been there - and it is embodied in the core concept of human dignity. Article 1 of the Universal Declaration of Human Rights starts with the words: "All human beings are born free and equal in dignity and rights". The concept of human dignity is referred to in the preamble to both Covenants on human rights and in a number of their operative provisions.

27. This very abstract and very general, but also very fundamental concept has normative significance in the field of human rights, at least insofar as it suggests that all forms of deprivation of human dignity, either in the civil and political field or in the economic, social and cultural field, are unacceptable. Moreover, it suggests that human rights are not given by an authority and may therefore not be taken away by it. 9/ The protection of realization of human dignity need not always require legal action and assertion of rights. But, on the other hand, all human rights, including economic, social and cultural rights could be traced back to this basic value, which should be seen as the common denominator in the interpretation and application of all human rights. Denial of human dignity may, and indeed does, take place both through denial of civil and political rights and through denial of economic, social and cultural rights. Conversely, respect for all these rights and, where necessary, positive action for their realization are the necessary elements for guaranteeing human dignity. Giving a general preference to this or that group of rights may become a way of departing from their very basis. Equal attention should therefore be paid to both groups of human rights.

28. Proceeding from this idea it is now necessary to ask the question of what the specific legal features of economic, social and cultural rights are and of the means of their realization. This question is relevant not only because of the different approaches to human rights referred to above but also because the specific nature of their implementation is generally recognized, inter alia in the provisions of article 2, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, which stipulates that States shall take steps with a view to achieving progressively the full realization of the rights contained in that Covenant. This provision distinguishes that Covenant very significantly from the Covenant on Civil and Political Rights, which clearly establishes the duty of States parties to "respect and ensure" civil and political rights. Nevertheless,

> "... the Covenant on Economic, Social and Cultural Rights is law, not merely exhortation and aspiration. The rights it recognizes are as 'human', universal and fundamental as are those of the Civil and Political Rights Covenant..." 10/

29. Proceeding from such general recognition of economic, social and cultural rights as human rights, authors make different interpretations of the actual content of these rights and of the extent of the corresponding obligations of States. Thus, according to one author, the international standards of economic, social and cultural rights

> "... establish a minimum level of social protection and welfare whose attainment should be sought by all States, whatever their system or circumstances, even if ... the full realization of the rights concerned is envisaged as a result of the progressive development of national policies, legislation and practical action". 11/

30. Another author goes further, arguing that there is an identifiable "mimimum core content of each right that cannot be diminished under the pretext of permitted 'reasonable differences'". 12/ He continues:

> "The fact that there must exist such a core (which to a limited extent might nevertheless be potentially subject to derogation or limitations in accordance with the relevant provisions of the Covenant) would seem to be a logical implication of the use of the terminology of rights. In other words, there would be no justification for elevating a 'claim' to the status of a right (with all the connotations that this concept is usually assumed to have) if its normative content could be so indeterminate as to allow for the possibility that the right holders possess no particular entitlement to anything. Each right must therefore give rise to an absolute minimum entitlement, in the absence of which a State party is to be considered to be in violation of its obligations." 13/

31. This approach certainly merits support and a great deal of further elaboration of the "minimum core content" of each economic, social or cultural right. In the framework of the United Nations the main work of this kind should be done by the Committee on Economic, Social and Cultural Rights. The

identified minimum core content of each right might also help the Commission on Human Rights and other United Nations bodies to identify problems of the realization of economic, social and cultural rights more clearly and to formulate appropriate policies for the solution of such problems.

32. Another problem in this connection relates to the nature of States' obligations corresponding to the individual's economic, social and cultural rights and to the legally definable means of their implementation. The process of buiding up a more precise and legally convincing interpretation of the relevant provisions of the Covenant on Economic, Social and Cultural Rights has started relatively recently, after the Economic and Social Council adopted the decision to establish the Expert Committee. This generated increased interest in economic, social and cultural rights, resulting inter alia in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. 14/ These Principles, which are the result of the work of a group of experts in international law, 15/ offer the following interpretation of the core obligation of States parties to the Covenant "to achieve progressively the full realization of the rights":

> "21. The obligation 'to achieve progressively the full realization of the rights' requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary, all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.
>
> "22. Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2(2) of the Covenant.
>
> "23. The obligation of progressive achievement exists independently of the increase of resources; it requires effective use of resources available.
>
> "24. Progressive implementation can be effected not only by increasing resources but also by development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant." 16/

33. The quoted interpretation contains a far-reaching and ambitious programme and gives rise to a variety of questions. From the standpoint of law the terminology used does not seem to solve most of the problems involved. The notion of "immediate steps" looks simple, but the actual level of "immediacy" will necessarily vary from State to State and from one right to another.

34. The idea of implementing prohibition of discrimination immediately and by all States also calls for comment. Although the principle of non-discrimination belongs to jus cogens and is seemingly clear, it is much more difficult to envisage the precise scope of its implementation in different societal contexts. How far should a Government actually go in assuring equality and non-discrimination in matters of economic, social and

cultural rights? It is obvious that certain types of discrimination, e.g. racial discrimination and discrimination with respect to basic social services (primary education, basic health care, etc.), cannot be permitted or tolerated. But does the principle of equality and non-discrimination reach beyond that?

35. The example of the ex-socialist States may be useful to illustrate some aspects of this set of problematical questions. The policies of those States were characterized by, inter alia unqualified egalitarianism, which has made the idea of equality a slogan "describing" all social policies. Leaving aside the question of the reality and the value of the slogan (these are separate issues), it is more or less obvious that this doctrine necesarily overlooks the difference between equality and equity and the fact that a certain degree of inequality and reasonable differentiation is both equitable and necessary. Equality was developed to a level at which it was expected that all individuals would be "rewarded" equally irrespective of their contribution to the creation of resources in the society. Although this approach is justified with regard to basic social services (basic health care, education and the like), it is dangerous to elevate it to a level of a general principle. As experience showed, the idea of absolute equality had a very destimulating effect on the creation of wealth, which resulted in generally slow growth (and even negative growth). This eventually created a situation characterized by inadequacy of resources for most social services. As a result of this the level of realization of economic social and cultural rights in many ex-socialist States is inadequate in objective terms and is much below the level expected by the people in these countries. This is yet another example of the need for careful consideration to be given in policy-making and rule creation to a proper balance between the postulate of equality and the necessary differentiation among individuals.

36. The general remarks made in this chapter can be summarized as follows. There is a need for a holistic and coherent interpretation of all human rights. This is required in order to bring the processes of realization of human rights into accordance with the basic postulate of human dignity, which can be adversely affected in the civil and political sphere as well as in the economic, social and cultural sphere. However, the actual processes of realization of economic, social and cultural rights are facing additional and very fundamental problems. It is not possible to devise a generalized and meaningful policy guideline in matters such as this. A method of selection of issues is therefore necesssary.

37. The selection of issues which are, in the opinion of the Special Rapporteur and the Sub-Commission, of particular importance to the broader issue of the realization of economic, social and cultural rights, characterized the work on the previous reports. In making the selection the focus was put on issues specifically identified by the Commission on Human Rights and the Sub-Commission (structural adjustment, role of financial institutions, inter-agency coordination) and on other issues which reflect the major problems in the process of realization of economic, social and cultural rights. The same method has been applied in the preparation of the present report.

II. ONGOING BARRIERS: THE MAIN CHALLENGES OF OUR TIME

38. Although during the four-year mandate of the Special Rapporteur there have been many meaningful procedural, illuminating and legalistic strides forward in the United Nations human rights bodies and elsewhere, for many hundreds of millions of the world's citizens the full realization of economic, social and cultural rights is a distant, increasingly unattainable and desperate struggle. Despite the ratification by 106 countries of the Covenant on Economic, Social and Cultural Rights, the discouraging fact remains that over 1 billion people live in absolute poverty, some 180 million children suffer from serious malnutrition, 1.5 billion persons are deprived of primary health care and a safe water supply, 2 billion individuals lack safe sanitation and over 1 billion adults cannot read or write. While these dismaying statistics can in no way reveal fully the personal, family and community tragedies each represents, the clear global tendency shows these numbers escalating, not decreasing.

39. Though no individual force, policy or situation can be labelled as singly responsible for the painful state of affairs in which hundreds of millions of people entitled by international law to the enjoyment of economic, social and cultural rights, are deprived of these rights, the Special Rapporteur believes a number of elements can be identified which, if grouped together, form at least part of the explanation as to the factors which affect the realization of economic, social and cultural rights. The following merit particular attention in this context:

(a) Structural adjustment;

(b) Debt;

(c) Income distribution;

(d) Misconceptions of the State;

(e) Economic growth as panacea;

(f) Privatizing human rights;

(g) Misguided visions of development;

(h) Deficient political will;

(i) Environmental devastation;

(j) Military expenditure and armed conflict;

(k) Dualistic views of human rights.

A. Structural adjustment

40. The bulk of the second progress report of the Special Rapporteur addressed the relationship between structural adjustment measures advocated by the World Bank and IMF and the fulfilment of economic, social and cultural

rights. 17/ The findings outlined in the progress report pointed above all to the impact structural adjustment programmes have had and continue to have upon the realization of these rights, in particular the rights to work, to food, to housing, to health, to education and to development. 18/ This view was reflected in Sub-Commission resolution 1991/27. 19/

41. The second progress report also took note of discernable changes in some of the formal characteristics of the "structural adjustment package" throughout the past several years, as advocated by both the World Bank and IMF. The inclusion of "social safety nets" in this process, an expanded emphasis on shielding the poor from the sharper edges of adjustment, a growing recognition of the impact of adjustment on women, and a range of other factors seeking to give adjustment a more "human face" have been deployed. While these are welcome signals in the economic stabilization dynamic, and should assist in mitigating the negative impact of adjustment on the realization of economic, social and cultural rights, the structural adjustment process continues to have a daunting effect on human rights and upon the capacities of legal regimes with obligations to fulfil and respect these rights. While reference should be made to the 1991 report for a more detailed examination of the relationship between adjustment and human rights, a few additional issues require reiteration.

42. The relative decline of national sovereignty and domestic control over local economic processes and resources and the corresponding growth in the level to which the international financial agencies directly influence domestic policy decisions are clearly aspects of the adjustment process which conclusively affect economic, social and cultural rights. A range of authors have pointed out that there is something inherently problematic when the adjustment process is utilized as a means of directing the national economic development process externally.

> "Adjustment loans represent the desire of the Bank not only to be an important source of finance, but also to play a central role in the decision-making processes in developing countries ... Governments which receive SAL's are rewarded by being allowed to spend the money they receive on just about anything they like." 20/

43. This latter point also raises questions, for unlike project-specific funding from donors and all that this entails (design, participation, administration, follow-up, analysis, etc.), the adjustment process creates strong conditionalities but with only limited control being exerted on decision makers as to how and where they spend adjustment loans. This has led some analysts to assert that adjustment is more about substantiating Bank and Fund dominance, and doing this by financially backing the status quo, than about promoting human development. 21/

44. The World Bank, on the other hand, notes approvingly that "there are definite signs of greater willingness on the part of African Governments to consider policy reforms". 22/ Indeed, the Bank defines the main function of external aid as helping to ensure that Governments "sustain reforms against the opposition of those who are adversely affected". 23/ Whereas IMF asserts that "reshaping of the tasks of Government is an integral part of structural

adjustment". 24/ It thus seems that the initiative in formulating economic policies has shifted from the national authorities to international sources, often with negative effects on the people of the developing world, while establishing the clear dominance of foreign-trade-oriented social classes. 25/ As foreign investors and creditors have increased their power and influence within national policy-making structures the power and reach of the State have declined, particularly in countries undertaking measures of adjustment. 26

45. Opening up a national economy may be seen as necessary for certain economic processes to flourish, and a certain degree of openness is unavoidable and indeed, desirable. However, the liberalization process also tends to create correlated trends, such as a reduction of the regulatory capacity of States, a relative decline in national independence and the subjection of certain processes to the conditioning factors of the global marketplace. 27/ Each of these tendencies, of course, can reduce the capacity of national or local government to create the conditions necessary for the realization of economic, social and cultural rights. The often drastic impact of adjustment, particularly on the lives of vulnerable groups have led some countries to ponder whether the option of delinking from the international economy might be more advantageous an approach towards the fulfilment of socio-economic rights. Efforts at delinking however, have generally proved fruitless and wrong. 28/

46. The financial orientation of the World Bank and IMF could form part of the explanation as to why the measures of success they assert frequently differ so markedly from the relative lack of achievement of these programmes as expressed by a majority of other analysts. One author, encapsulating the sentiments of much of the literature consulted by the Special Rapporteur, noted in 1991, for instance:

> "But the economic benefits of adjustment in most African cases have been modest or lacking. Few reform programmes have achieved the targeted growth rate or increase in per capita agricultural production, or improved current accounts balance and external debt position." 29/

Interestingly, examining the same region, IMF offers a wholly different interpretation of the success of adjustment:

> "Thus, for those countries that have experienced long-term low growth, with continuous deterioration of per capita income, such as in sub-Saharan Africa, a recent review by the IMF shows that where structural programmes have been implemented unambiguously, growth performance has improved." 30/

47. These two examples indicate a much wider tendency towards highly conflicting interpretation of the relative achievements of the adjustment process. This ongoing disparity of views could, however, decline as the policy reformulations taken by IMF and the World Bank vis-à-vis adjustment begin to take hold. While rhetorically there are rapidly increasing areas of complementarity between the approaches advocated by the Bank and the Fund and the manner in which the United Nations views economic, social and cultural rights, the practical realization of these rights constitutes the major issue.

Greater coordination of efforts between the international financial institutions and the human rights bodies as a whole will be required to facilitate the recent and encouraging steps towards a mutually beneficial approach.

48. Another disputatious issue of adjustment concerns the view of both the Bank and the Fund that there are no alternatives to the form of structural adjustment they advocate. Typical of this approach is the statement of the previous president of the World Bank, Barber Conable, that: "Structural adjustment is absolutely fundamental to the Bank's assistance strategy ... there is no alternative". 31/ While IMF has argued that economic, social and cultural rights themselves "cannot be realized in the absence of structural adjustment". 32/ In the view of the Special Rapporteur, however, while it is widely agreed that developing countries' economies need to adapt to the changing circumstances of the global economy, the programmes of structural adjustment advocated by the international financial institutions and accepted and applied by States themselves do not appear to represent the only solution.

49. Despite the more recent visions of adjustment by IMF and the World Bank, these programmes still appear far too often to be inspired by economic theory rather than practical experience of the human, political, social and economic impact adjustment has had upon the more than 70 countries which have applied what is often referred to as "bitter medicine". 33/ For instance, despite their obviously different economic structures, the structural adjustment programmes negotiated with Sri Lanka, Ghana, Kenya, Zimbabwe, Costa Rica, Nicaragua, Nigeria and the Philippines were essentially the same. At an absolute minimum, the overriding tendency of adjustment measures to take on virtually the same components, notwithstanding the specific conditions prevailing within an adjusting country, requires reconsideration. Applying more or less the same standards in this respect would appear, prima facie, to render the obligation under the Covenant for States parties to "progressively fulfil the rights, to the maximum extent of their available resources" non-applicable, which, of course, it is not.

50. The relationship between the human rights obligations of States and the conditionalities attached to structural adjustment loans is another critical issue and one which was discussed briefly in the second progress report of the Special Rapporteur. 34/ The conditions generally set by IMF, which must be fulfilled by a recipient country prior to receiving financing from the World Bank or before being considered as internationally creditworthy, concern areas of state involvement which can have a decidedly negative influence, both directly and indirectly, on the attainment of economic, social and cultural rights. The "shock therapy" nature of some conditionalities, and the short- and long-term impact upon less shielded social groups have led to the advocacy of alternatives to this practice, some of which involve essentially softer terms of adjustment, and others a non-adjustment formulation. As a general principle, conditionalities should never result in the outright infringement of economic, social and cultural rights, nor threaten the satisfaction of the basic needs of subsistence.

51. Though similar ideas have been advocated many times previously, the notion of a "development contract", most recently proposed by the Minister for Foreign Affairs of Norway provides one of many potentially useful and

thought-provoking alternatives to the existing measures found in the common adjustment package. Put in the most basic terms, the "development contract" would entail the creation by developing countries of socio-economic objectives and targets concerning basic needs, employment levels, income distribution and social security; sustainable trading patterns and targeted improvements in the overall position of women; thus signifying a broader approach to economic stability than is traditionally applied. The international donor community, conversely, would promise both financial support for the development plan and additional financing to compensate for export earning losses brought about by causes beyond the country's control. The contract would also entail substantial adjustment in the industrialized countries without (as is currently the case) transferring the costs to the developing world, as well as ensuring that adequate resources are provided to enable the commitments of the recipient States to be achieved.

52. Another benefit of the development contract idea would be to ensure that a specific case-by-case approach is pursued vis-à-vis adjustment, adequately reflecting the huge diversities between national economies, cultures and histories. IMF, for instance, asserts that

> "there are certain similarities among programmes ... many of the countries that come to the Fund ... have serious external payments difficulties that can be traced to excess spending by government, and this is often accompanied by entrenched inflation". 35/

Although IMF argues that it does not apply the same means of adjustment to all States, much of the literature considered by the Special Rapporteur points to the opposite view.

53. Domestic opposition to structural adjustment has been a particular dilemma which many Governments have faced, and from this opposition has emerged a great variety of alternative adjustment scenarios. IMF has noted that:

> "[i]t should be recalled that the programmes supported by the Fund are the programmes of the countries themselves. Indeed, they cannot succeed unless they have the full support of the population, including those whose full economic, social and cultural rights may be infringed upon". 36/

54. If this is true, adjustment as a process is doomed to fail, when Governments do not have proper support from the population as far as adjustment programmes are concerned. 37/ Moreover, this perspective seems to imply that while Governments maintain ultimate responsibility for adjustment, IMF expects citizens whose rights are disregarded to support the processes leading to such infringements.

55. In the view of the Special Rapporteur, it appears not only increasingly unrealistic to anticipate the emergence of full-scale support for adjustment, but this approach is also questionable under the terms of the Covenant on Economic, Social and Cultural Rights, which oblige all States parties to

guarantee, at an absolute minimum, basic subsistence rights for all. Two General Comments (Nos. 2 and 4) of the Committee have in fact, addressed precisely this point. In General Comment No. 2 it noted:

> "The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment." 38/ (Emphasis added.)

56. The Committee's most recent comment, General Comment No. 4 on the right to adequate housing, goes even further in this respect, asserting that not shielding the poor from a decline in living conditions could amount to a violation of the Covenant:

> "The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment No. 2, despite externally caused problems, the obligations found in the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations found in the Covenant." (Emphasis added.) 39/

57. The Special Rapporteur has also noticed a variety of contradictions in the adjustment measures and accompanying conditionalities advocated by the Bank and IMF, most notably affecting two central themes in the field of economic, social and cultural rights, health and education. In the World Development Report 1991 for instance, public investment in health and education are described in the following terms:

> "Better diets, housing, and control of communicable diseases have raised the quality of life everywhere ... Better health is desirable as an end in itself. But it also brings substantial economic benefits - releasing resources that can then be used to achieve other development goals." 40/
>
> ...
>
> "By improving people's ability to acquire and use information, education deepens their understanding of themselves and the world, enriches their minds by broadening their experiences, and improves the choices they make as consumers, producers, and citizens ... Again, progress on education is to be sought mainly as an end in itself. But the evidence that education promotes economic growth, and thus puts other development goals in reach, is firm." 41/

58. The contradiction lies in the de facto incompatibility of these largely appropriate views with the very nature of the modalities of structural adjustment advocated by the Bank and the Fund. In the African context, for instance, the burden of adjustment fell disproportionately on gross domestic investment and on general government consumption. This handicap, of course, impaired the increase in productive capacity and hence in the growth potential of African countries, resulting in neglect and run-down of economic and social services such as roads, power, hospitals, clinics, schools, research, credit and welfare programmes. 42/

59. In Latin America and the Caribbean total gross investment declined by a staggering 41 per cent during the period 1980-1985, while fixed net investment decreased by 51 per cent during the same period. This decline has, of course, heavily affected central government expenditure on both health and education. In Chile, for instance, in 1970 public spending on health amounted to 10 per cent, while education received 20 per cent. In 1985 these percentages had decreased to 6.1 per cent and 13.2 respectively. In Mexico during the same period, health spending went from 5.1 per cent to a mere 1.5 per cent of total central expenditure. With only a few exceptions, these tendencies appeared in most of Latin American countries as well. The impact of structural adjustment upon overall living and housing conditions, a subject addressed in the 1991 General Comment No. 4 noted above, have been well documented. 43/ Nevertheless, the proponents of adjustment rarely address this specific aspect of the process of "economic stabilization".

60. With the emergence of situations as serious as these, it is unsurprising that one document, encapsulating an increasingly held view within the United Nations, stated that:

> "... adjustment policies in many cases have aggravated the situation of the poor. Real wages have dropped, access to health and education have been reduced, and in some countries the decline in infant mortality has slowed down or stopped entirely." 44/

61. Many additional United Nations reports have come to similar conclusions concerning the human impact of adjustment, including documents from the Department of International Economic and Social Affairs, the Economic Commission for Latin American and the Caribbean, (ECLAC), the Economic Commission for Africa (ECA) and from the human rights bodies themselves.

62. In addition to the views offered in this respect by the Committee on Economic, Social and Cultural Rights, the Sub-Commission in resolution 1991/27 and by the Commission on Human Rights in its resolution 1992/9, entitled "Effects on the full enjoyment of human rights of the economic adjustment policies arising from foreign debt and, in particular, on the implementation of the Declaration on the Right to Development", the Commission expressed its concern about the repercussions of structural adjustment programmes on the realization of economic, social and cultural rights.

63. The aforementioned issues involve some of the many areas of controversy surrounding adjustment when viewed both generally, and more specifically through the lens of human rights. In order to address the human rights

dimension more adequately within the framework of adjustment, the Special Rapporteur proposed the drafting of a possible set of basic policy guidelines on structural adjustment, which was approved by the Sub-Commission in resolution 1991/27. The process of drafting such basic policy guidelines, set within a human rights framework, could serve to display coherently the main concerns of the human rights bodies vis-a-vis adjustment, offer a significant contribution to the adjustment debate, as well as provide an opportunity for the exchange of views with the international financial institutions, member States and non-governmental organizations about the still under-emphasized human rights angle of the adjustment process.

64. In the view of the Special Rapporteur, the following issues should be discussed and eventually included in these guidelines:

(a) The impact of the adjustment process on national sovereignty;

(b) The issue of popular participation in the development of adjustment programmes, and how most effectively to subject adjustment packages to public scrutiny prior to their implementation;

(c) Integrating human rights yardsticks into any equation measuring the levels of achievement of adjustment programmes;

(d) Exploring viable alternatives to the adjustment process;

(e) The relationship between conditionalities and internal human rights obligations;

(f) Precise measures to be employed to protect all social groups from the negative impact of adjustment, with a view to expanding existing measures of protection such as social safety nets;

(g) Means of rectifying existing contradictions between the adjustment process and the avowed goal of the institutions which promote adjustment;

(h) the human rights affects of liberalizing economies, free trade and the internationalization of the world economy;

(i) Ways and means of ensuring that the rhetoric about protecting the poor, utilizing social safety nets and other new additions to the adjustment package actually have a positive and material impact;

(j) Ways to ensure that the existing policy contradictions within both the World Bank and International Monetary Fund are rectified in the true interests of promoting economic, social and cultural rights.

B. Debt

65. The debt crisis of the past decade, linked closely to the adjustment process, also has direct repercussions upon the enjoyment of economic, social and cultural rights. Although numerous proposals have been made during the

past several years to deal with this ongoing crisis, none have had the necessary impact, nor have any gone far enough in addressing existing balance of payment problems.

66. According to the World Bank, third world debt reached 1,351 billion dollars at the end of 1991, whereas at the beginning of the debt crisis in 1981, the debt of these countries amounted to slightly half of its current level. 45/ The Organization for Economic Co-operation and Development (OECD) puts the figure even higher at US$ 1,450 billion. As noted in the Special Rapporteur's second report, the debt situation has resulted in an unprecedented reverse flow of financing from the developing to the industrialized world. Total resource flows from the South to the North between 1982 and 1990 amounted to at least US$ 432 billion, equivalent to more than six Marshall Plans, evaluated in 1991 dollars. 46/ Between 1985 and 1990, Brazil paid out 54.5 billion dollars more to its creditors than it received in new loans. According to the World Health Organization, it would take slightly less than that amount (US$ 50 billion) to provide safe water and sewers for all of Latin America during the next decade. 47/

67. The various debt reduction plans which have been undertaken have only touched the surface of a very deep problem. Since 1988, for instance, the Paris Club has reduced the debt of some 39 low-income countries by a meagre 6 billion dollars by lowering interest on debt or extending repayment periods, and has cancelled another 1 billion in debt. This reduction, however, represents only about 5 per cent of the total debt of these countries.

68. The debt crisis led to a tremendous growth in impoverishment, and UNICEF estimates that more than 500,000 children die annually as a direct consequence of ongoing debt-related problems. 48/ The Commission on Human Rights in 1992 outlined in resolute fashion its awareness that "the serious problem of foreign debt remains one of the most acute factors adversely affecting economic and social development and living standards of the inhabitants in many developing countries, with serious effects of a social nature".

69. Debt not only has an effect in the developing world, but in the northern economies too, as recently outlined in the recent book The Debt Boomerang by Susan George. The degree of the debt problem is easily seen when considering the sheer scale of individual countries' debt burdens. Brazil has the largest external debt amounting to over 116 billion dollars, while the following countries have the following debt rates: Mexico, 96.8 billion; Argentina, 61.1 billion; Poland, 49 billion; Venezuela, 33.3 billion; Algeria, 27 billion; Morocco, 23.5 billion; Peru, 21.1 billion; Cote d'Ivoire, 18 billion; Syria, 16.4 billion; Ecuador, 12.1 billion; Bulgaria, 10.9 billion; Nicaragua, 10.5 billion; Congo, 5.1 billion; and Bolivia, 4.3 billion).

70. The World Bank and other financial institutions have clearly recognized the serious consequences of the debt dynamic, however usually bypassing any profound analysis of the social impact the crisis continues to have upon the poor. The Bank's 1991 World Development Report asserts:

> "The debt crisis remains an obstacle to growth. Overcoming it requires the implementation of comprehensive adjustment programmes and return to regular creditworthiness; expanding the number of countries covered by commercial-debt and debt-service reduction; more concessional rescheduling for the poorest debtor countries; expansion of debt forgiveness and deepening the concessionality of other debt relief measures by official bilateral lenders; and an increase in equity and quasi-equity investment". 49/

71. Yet few analysts believe the debt crisis is anything near solution, with many indications pointing to the opposite view. The 1991 world economic survey prepared by the United Nations warns of another decade or more of economic stagnation or decline and its concomitant social costs as a result of the continuation of the debt crisis. 50/

72. The European Network on Debt and Development (EURODAD) has developed the following fundamental principle regarding debt, with which the Special Rapporteur agrees, and which goes to the core of the problem:

> "Debt payments should not take precedence over the basic rights of the people of debtor countries to food, shelter, clothing, employment, health service and a sustainable and healthy environment. Each country must have sufficient resources to allow sustained and sustainable development and growth to take place." 51/

73. Similar views have been expressed even by the General Assembly and the Commission on Human Rights with regard to the increasing deterioration of living conditions in the developing world, its negative effects on the full enjoyment of human rights, and especially the very serious economic situation of the African continent and the terrible effects of the heavy burden of external debt on the developing countries. 52/ The Commission on Human Rights has considered:

> "that the new strategies for solving the debt problem, of both official and private origin, require policies of economic adjustment accompanied by growth and development, and that it is essential, within those policies, to give priority consideration in their implementation to human conditions, including standards of living, health, food, education and employment of the population, especially among the most vulnerable and low-income groups." 53/

74. In the view of EURODAD, to achieve these and other debt-related aims the following goals require to be attained before the end of 1992:

(a) None of the low-income debt burdened countries should be making hard currency payments on official bilateral debt, hence 100 per cent of their (official) debt must be cancelled;

(b) Official bilateral debt service payments by middle-income countries should be cut by an average of at least 50 per cent;

(c) All outstanding non-concessional IMF and World Bank debt owed by the poorest debt-burdened countries should be paid off through new, concessional finance;

(d) All remaining aid loans should be cancelled; and

(e) All outstanding debts owed to the European Development Fund of the European Community by ACP countries should be cancelled. 54/

75. In the absence of substantial reduction and cancelation of debt, the prospects of a world in which economic, social and cultural rights stand a greater chance of realization and fulfilment are meagre.

C. Income distribution

76. Viewed globally, there exists an unfortunate tendency towards linking the role of income distribution both within States and between States, with the realization of economic, social and cultural rights. The World Bank, for instance, cautions against income redistribution, arguing that it "can be damaging, and the benefits in any case often go to the less needy". 55/ Whereas the IMF Executive Board has reiterated that "questions of income distribution should not be part of Fund conditionality". 56/ These views would also be at odds with the ideas contained in the "development contract" proposals noted earlier.

77. Although statistics on income distribution are currently only available for slightly more than a quarter of all States, it is well established that a decline in per capita income during the 1980s was experienced in Latin America and Sub-Saharan Africa, and the tragedy continues of the staggering number of more than 1 billion persons in the developing countries forced by circumstances beyond their control to live in absolute poverty. Many writers claim an empirical relationship between a worsening distribution of income and the undertaking of adjustment measures.

78. Income distribution within States remains distressingly inequitable. Even in the industrialized countries where forms of comparatively progressive taxation and high levels of economic development and consumption are the norm, the wealthiest 20 per cent of the population continues to receive nearly seven times as much income as the poorest 20 per cent. 57/ Conditions of income distribution in much of the developing world are substantially worse, such that countries as diverse as Botswana, Brazil, Colombia, Costa Rica, Côte d'Ivoire, Jamaica, Guatemala, Malaysia, Panama, Peru, Sri Lanka, Thailand and Venezuela maintain economic systems where the richest 20 per cent of the population possess more than a 50 per cent share of total household income (and in some cases more than 60 per cent), while the corresponding share of the poorest 20 per cent of families hovers around 4 per cent. These figures indicate that drastic measures to rectify this income injustice are clearly required. 58/ Adequately carrying out poverty-reduction programmes and fulfilling economic, social and cultural rights throughout society is unthinkable without also redressing current income imbalances.

79. The 1980s also witnessed significant changes in the share of income of different social groups in most countries. The urban working classes and

large segments of the middle class have been impoverished, while groups and businessmen associated in one way or another with the internationalization of capital represent the major economic beneficiaries of the past 10 years. 59/ In Sub-Saharan Africa, between 1980 and 1988, per capita incomes declined by some 30 per cent, while only three of the 35 countries in this region managed to attain substantial economic growth in per capita GNP during the 1980s. 60/

80. The growing income disparity between States has created a situation in which the average income in the rich countries is some 58 times (5,800 per cent) higher than in the least developed countries. This is a problem of crisis proportions. 61/ Viewed slightly differently, the poorest of the developing countries sustain more than half of the world's population, while possessing only 5.6 per cent of world income. 62/ Conditions such as these indicate that issues of income distribution must re-enter the framework of discussion regarding economic, social and cultural rights. Ignoring this issue, as now occurs all too frequently, will only augment existing problems. The politically sensitive aspect of redistributing income must be overcome in the interests of fully complying with existing legal obligations of States to recognize, respect, protect and fulfil economic, social and cultural rights.

81. Despite the United Nations goal of 0.7 per cent of GNP of the OECD development assistance countries to be devoted to "development assistance" (which has only been attained by a handful of countries), the actual proportion of any aid reaching not merely the poorest segments but even the recipient country itself is disparagingly meagre. At present, in the United States, for instance, some 70 per cent of every dollar of "assistance" to the third world never actually leaves the United States. 63/ A similar ratio applies to the other industrialized countries and to the international financial institutions themselves.

82. Some human rights organs, most notably the Committee on Economic, Social and Cultural Rights, have begun addressing the obvious relationship between income distribution and the society-wide realization of economic, social and cultural rights. For instance, during its sixth session, several States were asked by the Committee if significant steps had been taken to redress existing income disparities and what impact national disparities in income had upon the society-wide enjoyment of the rights found in the Covenant. The Committee's guidelines for States' reports request States parties to indicate the per capita GNP for the poorest 40 per cent of the population, and whether a "poverty line" exists, and if so, the basis of this line.

83. Progressive (as opposed to regressive) measures of taxation can, if supported by adequate administrative machinery and enforcement mechanisms, lead to gentle and gradual forms of income redistribution within States without threatening economic stability or patterns of growth, thereby creating conditions enabling a larger proportion of society to enjoy economic, social and cultural rights. By itself, however, taxation does not provide an assurance that the finances made available to public bodies will be allocated in a manner consistent with either the Covenant on Economic, Social and Cultural Rights or the prevailing needs in society. Taxation though, remains the main single source of finance for public expenditure and, while complex by

nature, the system of levying tax should be a criteria against which compliance with international obligations is measured, as well as a central means of redressing existing imbalances of income distribution.

84. Growing income disparities not only threaten the realization of economic, social and cultural rights, but serve to polarize excessively and fragment societies into the precarious and destabilizing dualism of "haves" and "have nots". Coupled with the "retreating" State, income disparity provides a dangerous basis for alienation, disenfranchisement and cynicism, which can lead ultimately to a deterioration in the very relations constituting civil society. Income distribution is a critical issue, if for no other reason than the relationship it has with democracy:

> "History suggests that increasingly polarized societies in which growing numbers are pauperized, are enormously handicapped in the search for democracy." 64/

D. Misconceptions of the State

85. The legal basis upon which economic, social and cultural rights rest, essentially assumes the presence of a "strong" State as the motor behind realizing these rights, combined with a correlative national approach towards this category of legal entitlement. This view, however, is clearly at odds with the prevailing political realities of a majority of States, as well as views of the allegedly "appropriate role" of the State, increasingly advocated by the World Bank, which views any State involvement in the economy as suspect. Coupled with the assumption of a strong State are other inherently political factors which would seem critical for the society-wide enjoyment of these rights. They include, but are not limited to: a well coordinated, efficient and corruption-free ministerial and governmental apparatus; a reasonable degree of decentralized decision-making and popular participation by citizens; consistently applicable and non-politically motivated respect for the rule of law; the existence of "good government" supported by the will of the citizenry; government-wide knowledge of and adherence to international commitments regarding economic, social and cultural rights; an economic planning process geared towards the progressive realization of these rights and so forth.

86. It goes without saying that the world as we know it does not resemble this vision, even though the existence of the "strong State" is still assumed by many to be the norm. A great many States, including those purported to be democratic by nature, in many important ways far more resemble "soft" or "particularistic" forms of governance than the "strong" or "universalistic" vision so often coupled with ideal views of the State protecting, respecting and fulfilling economic, social and cultural rights. And accompanying the economic crisis of the past decade, the State as we generally view it, has been weakened yet further.

87. This common dilemma has several dimensions worth examining. Firstly, the particularistic State, instead of basing actions, policy, programmes and projects exclusively on "the rule of law" or existing international and national commitments, tends on the contrary to govern more on the basis of

connections, inducements, political ties, money and patron-client relationships. 65/ This situation, naturally, has tremendous implications for a number of aspects of the political dynamic affecting the realization of economic, social and cultural rights. For if allegations such as these are true, access to the State's resources is sought much more forthrightly through patronage than through what will amount to essentially hopeless attempts to affect existing policies. Policy, in this context (the preferred mode of evaluation by human rights analysts) becomes, therefore, a comparatively unimportant aspect of political movement.

88. As prescriptions for altering policy tend on the whole to constitute the central contribution of most commentators seeking to redress the failures of development, the existence of the particularistic State will destine policy change to be mere rhetoric. Moreover, this predicament could be arguably viewed as one of the major factors as to why reliance on the "rights" element of economic, social and cultural matters remains so underemphasized. The problems associated with these rights, thus, may not be solely contingent upon policy, but upon the nature of the structure of the State itself.

89. The particularistic State breeds corruption, and this too has a generally negative influence on the realization of economic, social and cultural rights. The Human Development Report 1991 of UNDP, addresses the development implications of corruption head on. The report asserts, for instance, that in Pakistan, the illegitimate private gain from a public position is unofficially estimated at 4 per cent of GNP, amounting to nearly US$ 1.5 billion. 66/ Estimates of corruption are even higher for many other countries. Recognizing that corruption is difficult to combat, but that openness in the conduct of public business can help minimize it, UNDP correctly contends that corruption "is a serious problem in many countries - and a waste of time and money that could be better used elsewhere". 67/

90. Citizens in numerous nations view the "State", democratically elected or not, as an entity which has little to offer them in practical terms. Poor people in most places tend far more to fear the State and its agents than to look towards them as social actors capable and willing to assist them in their daily struggles for survival. Max Weber, in fact, defined the State as a particular kind of organization, "a compulsory association, successfully claiming control over and a monopoly of violence within a territory". 68/ We need only consider the fact that many of the daily actions carried out by disadvantaged social groups are considered by public officials in many countries as technically "illegal", with the use of law designed to infringe and not respect the rights of the poor. Concerning government sponsored or tolerated forced evictions, for example, one of the most frequent public justifications for carrying out this act is the "duty of the State to uphold the law and protect property", creating conditions in which it is far from astonishing that people put minimal faith in legal solutions to their predicaments.

E. Economic growth as a panacea

91. The current global embrace of the market and concomitant economic growth as a panacea for all of the world's economic dilemmas is manifested not only in measures of structural adjustment, but also in contemporary themes such as

the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), the creation of expanded free-trade zones, and a general open-armed approach towards opening up national economies to international interests. These new realities cannot be ignored in the context of economic, social and cultural rights, for the increased reliance on growth in and of itself as a guarantor of these rights is being ardently advocated by proponents of exclusively market-based approaches towards development. Although it has to be recognized that growth is necessary for a successful policy of realization of economic, social and cultural rights, a growth-oriented policy in itself is not enough.

92. There appears to be no assurance whatsoever that economic growth, fuelled by an open market will necessarily lead to poverty alleviation or an improvement in the de facto status of socio-economic rights. For instance, despite record levels of economic growth in the Western world during the past 15 years, over 100 million people in industrialized countries still live below the poverty line, a problem particularly acute for the young, single-parent families and ethnic minorities. 69/ UNICEF has emphasized that the growing consensus concerning the importance of market economic policies should be accompanied by a corresponding consensus on the responsibility of Governments to guarantee basic investments in people. 70/ Heed should be taken of the statement of Amarta Sen, perhaps more pertinent now than ever, that:

> "The limitations of the market mechanism in distributing health care and education have, in fact, been discussed in economic theory for a long time (e.g. Samuelson and Kenneth Arrow). But it is easy to lose sight of these problems in the current euphoria over the market mechanism. The market can indeed be a great ally of individual freedom in many fields, but the freedom to live long without succumbing to preventable morbidity and mortality calls for a broader class of social instruments." 71/

93. Being the dominant ideology of the international development world, economic growth is seen in some instances to be threatened by wage increases. One World Bank study suggested that the export-led growth of the Republic of Korea was "threatened by the improvement in the income share of workers" that had recently taken place, and advised the Government to prevent any further rise in wages, with most adjustment programmes stressing the imperative of "wage discipline" by workers. 72/

94. The World Bank claims that there is no clear link, in either direction, between growth and changes in income distribution, implying of course that political intervention is required to rectify income imbalances even during times of economic expansion and that growth in and of itself is no guarantee of society-wide prosperity. If we look at growth in Thailand, for instance, which was the highest in the world during the late 1980s, we can note that the incidence of poverty was actually higher in 1991, on the heels of years of tremendous export-based growth, than 10 years earlier, prior to both the adjustment process and the economic boom. 73/

95. As a measurement of economic success, growth relates directly to the increasingly questioned but long-trusted means of determining economic strength, gross national product (GNP). The wide-ranging and serious shortcomings of GNP are now widely acknowledged, and it appears that the

UNDP Human Development Index (HDI) is designed, at least in part, to form an alternative to the decade-long reliance on GNP as a measure of human progress. As is evident from the 1991 UNDP Human Development Report:

> "The best way to promote human development is to increase the national income and to ensure a close link between economic growth and human well-being ... Without such action, no human development can be sustained in the longer run. Economic growth has to reach people, and people have to contribute to growth. Both nationally and internationally, economic growth with human development will, in the longer term, depend on achieving a better match between economic opportunities and people's needs." 74/

96. The emphasis placed upon the role of the market and economic growth in promoting broader goals associated with social development, directly impinges upon the role of government in achieving these ends. This viewpoint has been criticized extensively by many actors, including UNICEF, which states that, for example, the World Bank sticks closely to the view that government's place is in the arena of social investment rather than economic management.

> "Maximum investment in people and minimum intervention in markets is the nub of the Bank's current advice ... [but] the Bank is not even-handed in its scrutiny of these two aspects of development policy. Its implication continues to be that markets can do little wrong and that all economic growth is necessarily to the good (including the kind of growth which the World Bank has assisted in the Amazon region and which has benefited neither the poor majority or the environment). Government intervention in the economy, on the other hand, is always regarded as guilty until proven innocent." 75/

F. Privatizing human rights

97. A valuable and concise analysis of the main components of the new policies being applied and advocated to deal with the global economic malaise of the 1980s is provided in the insightful book The IMF and the South: The Social Impact of Crisis and Adjustment:

> "The new policies represent a significant break with those associated with the post-war model. Economic planning has been all but abandoned by most countries. There is increasing reliance on market forces for regulating the economy. Price controls and subsidies are yielding place to price determination by supply and demand. Industrialization is no longer being promoted by deliberate policy measures; instead greater incentives are being given to production of primary commodities. Likewise, the quest for a more integrated national economy has given way to efforts at export promotion. There is increasing liberalization of foreign trade and payments. Greater national ownership and control of the economy are no longer priority objectives of development policy. The emphasis is instead on incentives to foreign investment and privatization of state properties and their sale to foreign interests. There have been cut-backs in social services and the tax burden has become more regressive in many countries." 76/

98. The flurry of many States romantically to embrace the market as the ultimate solution to all of society's ills, and the corresponding rush to denationalize and leave economics, politics and social matters to the whims of the private sector, although the theme of the day, will inevitably have an impact upon the full realization of economic, social and cultural rights. On the one hand, the private sector, broadly defined, can have a measurably positive effect on certain aspects of these rights, in particular in areas concerning self-help initiatives for development. On the other hand, however, history has adequately shown that many aspects of social policy cannot be attained through blind reliance on market forces.

99. According to the World Bank,

> "governments need to do less in those areas where markets work, or can be made to work, reasonably well ... governments need to let domestic and international competition flourish. At the same time governments need to do more in those areas where the market cannot be relied upon. Above all, this means investing in education, health, nutrition, family planning, and poverty alleviation; building social, physical, administrative, regulatory, and legal infrastructure of better quality; mobilizing the resources to finance public expenditures; and providing a stable macroeconomic foundation, without which little can be achieved." 77/

The same report, however, argues that the majority of States do not possess the resources or skills to intervene in this manner.

100. The rhetorical recognition of the role of the State, albeit only in a secondary position behind the market, does not mask the overall bias towards privatization and the reduction of State involvement in the economy. IMF has stated in this respect that "there is now widespread recognition that Governments must reduce their reach to those areas where they make a positive contribution to the performance of the economy". Yet even if one examines the situation vis-à-vis economic, social and cultural rights in countries which have sought to shift radically economic decision-making away from the State and towards the private sector, there is scant evidence that this approach has actually resulted in the alleged improvement in the status of these rights. For instance, the exclusion for adjustment programmes of some central features of European market economies such as labour codes, wealth redistribution, socialized medicine and other areas of State intervention in crucial areas where the market has consistently proved incapable of fulfilling demands, is a factor of adjustment which requires immediate rethinking.

101. Accompanying the debate about greater private sector involvement in areas such as health, education, water and sanitation has come a corresponding emphasis, important when considered under a human rights rubric on themes such as: the imposition of "user fees" for previously free services; the theme of "cost recovery"; and instituting a system of targeted subsidies by replacing much broader welfare entitlements. Even though low-income groups may be willing to pay a fee for improved services, employing a system of user charges for services which should be free could conflict with the rights of the people involved. Human Development Report 1991 appropriately asserts on this point:

> "offering the most basic services free permits greater equality of opportunity and fulfils a Government's responsibility to provide for its citizens' basic human rights." 78/

102. When user fees are introduced this can lead to discouraging some poorer groups from seeking the service and in some cases it has been shown that when user fees are introduced there is a corresponding decline in demand from the poor, particularly for health services. This and other problems with user fees has led UNDP, while acknowledging the benefits they can bring if applied thoughtfully, to suggest several useful general conclusions on user charges, namely: (a) primary education is a basic right and should be free; (b) there is a strong case for making secondary education free as well, for reasons of equity and productivity benefits; (c) access to primary health care should be universal and free; and (d) low-income families and children under five should have free access to hospital care. 79/

103. On the issue of user fees for water and sanitation, there are strong and obvious arguments for greatly increasing governmental expenditure on these services and for these basic rights of citizens to be free. As noted earlier, over 1.5 billion people have access to neither safe water nor sanitation. In this respect, it should be noted that it is not unusual for the poor to pay 20 to 30 times the price per litre of water that richer households, which have access to piped water, pay. It is estimated that water vendors provide up to 30 per cent of the water needs of the developing world's urban population. 80/

104. Subsidies targeted to those groups most in need of a certain service can satisfy more effectively the needs of the poorest sectors, and act to prevent seepage to better-off groups at the expense of the poor. However, the utilization of targeted subsidies can be such that the previous welfare entitlements of all citizens are replaced by a form of subsidy provided to only the poorest of the poor. This can create problems for groups which are poor but not absolutely poor, or for the lower-middle classes, effectively limiting their access to welfare services. Moreover, subsidies can rarely, if ever, be a substitute for the wide-ranging entitlements associated with economic, social and cultural rights.

105. Finally, the rush towards privatization has brought with it a mistaken belief that private property ownership must form an inherent aspect of the development process of the 1990s. It should, of course, be recalled that nowhere in either of the Covenants does the right to property appear. The re-emphasis upon the alleged necessity of reforming legal systems to include property rights might perhaps more appropriately be viewed in the context of conflict with even more pressing aims associated with land rights, land reform and redistribution, and the equally crucial right to adequate housing.

G. Misguided visions of development

106. The term "development" is much like the term "peace"; everybody supports it, but few define the concept in precisely the same manner. The economic, social, political, cultural and legal processes leading towards the developmental goal of nations has many proponents, but still too few who have understood the process sufficiently for it to have achieved realization

worldwide. Nevertheless an encouraging international consensus appears to be emerging on a number of crucial issues constituting human development. On the other hand, however, institutions such as IMF continue to view an active role for the State in promoting development with deep suspicion, arguing for instance, that:

> "All Fund-supported adjustment programmes, therefore, reflect an effort to open an economy up, to liberalize economic activities, to establish realistic prices and to reduce controls." 81/

107. Consensus is apparent in the assertion by virtually all United Nations agencies that some form of human development must go hand in hand with economic development. This simple and obvious equation is where the consensus ends, however, and where divergent views begin, particularly regarding how to attain these dual objectives simultaneously. Further incorporating human rights measurements and objectives into all aspects of the development process (as is occurring more comprehensively than ever before) could provide a means of assisting in the promotion of a more complementary approach. Applying human rights criteria to the development process and policies advocated internationally, could additionally play a role in seeking to come to an efficacious balance between those eternal actors, the State and the market.

108. Another element of this debate which requires more in-depth consideration by the human rights bodies is international cooperation for development and the accompanying issue of overseas development aid. The aid question is obviously only one element of the development debate, but a central one for institutions such as the United Nations. Every year between US$ 45 and 60 billion is devoted to "development aid" by the 18 industrialized member nations of the OECD Development Assistance Committee (DAC). The plea for donor nations to reach the sacrosanct level of 0.7 per cent of GNP for aid, has been reached by only a few States, with the average amount in the range of 0.35 per cent or half that level. Although one can argue convincingly that nations which have not met this goal should do so, it is perhaps more necessary to examine past aid practices, as well as to explore where aid money has gone and whether it has truly assisted in the development of the third world.

109. Human development has never been a priority of spending by the rich countries. According to the UNDP human development expenditure ratio, the United States, despite having the world's largest GNP, devotes only a meagre 0.01 per cent of its GNP to aid in areas related to human development. 82/ The 12 largest international donor countries devote less than 10 per cent of what they give, averaged out, to the satisfaction of basic needs in recipient countries. 83/ Similarly, the percentage of all World Bank lending which goes to education, health, population control and nutrition is minor compared with that which goes to energy, industry, urban development, roads, water and sanitation and telecommunications projects. 84/ The fact is that development aid has been far too limited to make a significant dent in global poverty.

110. The global push for development during the past 40 years has achieved a great deal. However, it has unquestionably led to the preventable victimization of millions of the world's most disadvantaged groups, through the external financing of huge and all too often entirely ill-conceived

projects and misdirected priorities. 85/ Prestige projects, in particular large dams, livestock ranches, massive resettlement and colonization schemes, and road-building, each funded in part by the international financial institutions and through bilateral assistance, have led and continue to lead to mass violations of human rights, all in the name of "progress and development". 86/

111. For instance, the view expressed in a World Bank publication that "involuntary resettlement is often an unavoidable aspect of many urban development projects and the volume of people who must be displaced in the name of progress is sure to grow as the world's urban populations increase", 87/ raises concern, particularly in the light of Sub-Commission resolution 1991/12 on forced evictions which equated this practice with gross violations of human rights. 88/

112. A growing body of literature is questioning traditional notions of development and asking whether the existing or past models in this respect have actually resulted in an overall betterment of the global human condition. The basis of these views is, at least in part, the fact that many development projects have failed in achieving their aims. This is even recognized by the World Bank itself. In a 1987 auditing exercise examining a representative sample of nearly 200 Bank-funded projects, it was pointed out that almost 60 per cent of these were found either to have serious shortcomings or to be complete failures. In Sub-Saharan Africa, 75 per cent of all agricultural projects audited were found to have failed. 89/ Yet project failures are only one dimension of the problem. Although the 1986 Declaration on the Right to Development recognized some of the shortcomings of this process, and indeed placed the human being central in the development dynamic, woefully few nations can claim to have fulfilled even a small proportion of the duties set out in this text. The new, visionary approach adopted by UNDP vis-à-vis human development is clearly a significant, timely and constructive step in the direction of promoting real development throughout the globe.

H. Deficient political will

113. Examining patterns of public spending, for instance those contained in the 1991 Human Development Report of UNDP, reveals quite convincingly that few States have attained satisfactory or high levels of expenditure devoted to human development, and thus to the achievement of economic, social and cultural rights. The 1991 UNDP report begins with the pertinent words: "The lack of political commitment, not of financial resources, is often the real cause of human neglect". The report also claims that nearly $50 billion a year (about 2 per cent of the GNP of the developing countries) could be released for more productive purposes. The freezing of military expenditure, halting capital flight, combating corruption, reforming public enterprises and reducing internal policing are several of the areas where added savings could be achieved. 90/

114. The analysis of public spending on human development and of how such expenditure can be designed and monitored contained in the 1991 UNDP report suggests the use of four different but related ratios: the public expenditure ratio; the social allocation ratio; the social priority ratio; and the human expenditure ratio. These ratios are extremely interesting in view of their

direct relevance to the obligations and rights found in the Covenant on Economic, Social and Cultural Rights, in particular with regard to measuring the until-now elusive concept found in article 2.1 of the Covenant of States parties' taking "steps ... to the maximum of its available resources with a view to achieving progressively the full realization of the rights" found in the Covenant. Arguing that the human expenditure ratio may need to be around 5 per cent if a country wishes to do well in human development, UNDP could identify only six developing countries of the 25 examined which had attained this level, indicating the relatively low degree of political commitment to economic, social and cultural rights. More than half of the countries examined had human development expenditures of less than 3 per cent: Argentina, Bangladesh, China, Colombia, India, Indonesia, Nigeria, Pakistan, the Philippines, Sierra Leone, Sri Lanka, Tanzania and Thailand. Six of these countries are States parties to the Covenant on Economic, Social and Cultural Rights. 91/

115. Conversely, steps need to be taken to go well beyond the basis of policy analysis as the sole reason for problems. Numerous externalities have an impact upon the realization of economic, social and cultural rights. Obviously, the international recession and the years of adjustment have seriously affected the capacity of the great majority of Governments to establish stable parameters for economic activity and to invest. Ghai and Hewitt de Alcantara have stated:

> "Faced with sharply declining public revenue, frequent balance of payments crises and the enormous burden of servicing the debt, many governments have over the past decade or more been unable to fulfil either their international or their internal commitments. Public services have declined in quality or simply disappeared; public works and infrastructure have deteriorated; public regulatory and administrative functions have been abandoned or sharply curtailed. 92/

116. Even a cursory look at the Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights reveals how few Governments have established a level of political will sufficient for seriously addressing ongoing deficiencies regarding the rights found in the Covenant. 93/ Moreover, none of the States' reports received by the Committee since the adoption of the revised guidelines for these reports, have actually addressed the specific questions raised in the guidelines.

117. Relatedly, political will vis-à-vis economic, social and cultural rights is too often assumed to be sufficient once legislation is in place concerning a specific right or component aspects thereof. Though the adoption of legislative measures can perhaps be singled out as one of the most appropriate means of ensuring the realization of economic, social and cultural rights, in accordance with article 2.1 of the Covenant, legislation alone is clearly insufficient to fulfil any economic, social or cultural right. To take but one example of many, although formulations of the right to adequate housing (article 11.1 of the Covenant) can be found in over 30 national Constitutions, in none of these countries can this right be said to have been achieved.

I. Environmental devastation

118. Structural adjustment package policies, which invariably include increasing exports, often result in the overexploitation of natural resources, which counteracts governmental attempts to solve environmental problems. Additionally, the destruction of the natural resource base often results in the increased inability of people dependent on the environment for their livelihood, for procuring building materials, collecting food and so forth to achieve their needs. The human and economic costs associated with ill-conceived, improperly planned large-scale development projects often affect the realization of economic, social and cultural rights. 94/ Large dams which flood villages and traditional land of indigenous peoples, logging of the tropical rainforests, non-regulation of polluting industries and numerous other devastating assaults on the environment threaten not only the long-term stability of the ecosphere, but run roughshod over people's rights in the process.

119. Environmental problems at the household, the workplace and neighbourhood levels have a staggering affect on people's quality of life and their right under article 12.1 of the Covenant on Economic, Social and Cultural Rights to "the enjoyment of the highest attainable standard of physical and mental health", as well as the right to "environmental hygiene", also contained in this article.

120. Of the many assaults on environmental health, the following are perhaps the most significant: contaminated water and accompanying illnesses; inadequate disposal of human wastes; waste water and garbage; insufficient water and washing facilities; disease vectors or parasites in housing structures; inadequate house size and limited ventilation; indoor air pollution; proximity to landslide areas or flood plains; the mental stress associated with fear of forced eviction; nutritional deficiencies; inadequate access to curative or preventative health care and lack of provision for emergency life saving services. 95/ These issues, so often taken for granted in the industrialized world, are daily threats to the health of hundreds of millions of people, and a clear breach of their right to the highest attainable standard of health.

121. Environmental devastation also has extremely high economic costs, which greatly inhibit economic stability and erode national income. Studies in several industrialized countries, for instance, have found that environmental damage from air, water and noise pollution amounts to between 0.5 and 2.5 per cent of GNP annually; a cost which exceeds the estimated price of pollution control. 96/

122. Environmental factors affect the economies of the developing world even more in relative terms. The cost of deforestation in Ethiopia is estimated at between 6 and 9 per cent of GNP and 5.7 per cent of GNP in Burkina Faso. 97/ The World Bank has increasingly recognized the risks of impoverishment as a result of environmental degradation. 98/ Added to these issues, are the excessive financial costs for many countries of alleviating the worst excesses of global warming, a rise in tidal levels, counteracting the problem of ozone layer depletion and so many other results of humanity's contempt for the planet on which it depends.

J. Military expenditure and armed conflict

123. At the end of the 1980s and the beginning of the 1990s, visions of a "peace dividend", reduced military tension and a "new world order" emerged which were thought by many to presage a world in which the military resolution of conflict was about to be relegated to the annuls of political history. Enthusiasm rose as to the possibilities of redirecting the perceived peace dividend towards areas of productive social expenditure yielding expanded realization of economic, social and cultural rights.

124. UNDP has forthrightly addressed the controversial issues related to military expenditure, suggesting that the industrialized countries could reduce military spending annually in the range of 2 to 4 per cent during the 1990s, yielding a 10 year saving of some $US 2 trillion dollars. It has pointed to the prospects of reducing military expenditure in the developing countries as well, indicating that a peace dividend would involve promoting more democratic regimes, settling regional disputes, freezing military spending (rather than doubling it) and increasing social spending. 99/

125. The relationship between military expenditure and armed conflict and the fulfilment of economic, social and cultural rights is obvious and requires no elaboration. Specific note should be taken, however, of Limburg Principle No. 65:

> "The systematic violation of economic, social and cultural rights undermines true national security and may jeopardize international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices towards its population." 100/

126. Still, the fact that more than 20 countries maintain levels of military expenditure which are higher than the combined total spending on health and education almost ensures that these States will be unable to fulfil the range of economic, social and cultural rights. 101/ Overall, in fact, taking all developing countries together, military spending equals combined expenditure on health and education. Reconciling such expenditure with obligations inherent in the realization of economic, social and cultural rights must become a priority matter for States themselves, as well as for the human rights organs of the United Nations.

K. Dualistic views of human rights

127. Economic, social and cultural rights continue to be viewed with suspicion, caution and scepticism, surrounded, as it were, with a hazy cloud of doubt and treated with an air of triviality. Although international law unreservedly treats this category of rights as equal to civil and political rights, the latter group continues to receive far greater attention. We need only examine issues of ongoing non-justiciability, the sheer scale of non-satisfaction of economic, social and cultural rights, the comparatively small number of non-governmental organizations which deal substantially with rights (particularly in the sense of monitoring them), and the linguistic formulations accompanying economic, social and cultural rights in the law to

substantiate this unfortunate claim. The fact that the only Committee entrusted with monitoring State party compliance with the human rights treaties which is not treaty-based is the Committee on Economic, Social and Cultural Rights emphasizes the continuing de facto double standard with regard to economic, social and cultural rights.

128. However, the continuing dualism associated with economic, social and cultural rights, in both practical and legal terms, is giving way to a more appropriate and holistic view of human rights as a whole. While many issues could be raised, several points are worth reiterating. First, although there has been a significant increase in attention to economic, social and cultural rights, in the view of the Special Rapporteur, disproportionate attention has focused on the purely legal issues involved, in particular the still contentious point of justiciability. This report has sought to identify some of the less emphasized areas which affect the fulfilment of these norms, and to indicate that issues such as justiciability, important though they may be, must be viewed alongside other factors affecting the realization of economic, social and cultural rights. Nevertheless, progress is being made and steps should be taken soon to amend the Covenant on Economic, Social and Cultural Rights to include an optional protocol enabling both individuals and groups to submit formal complaints alleging violations of their rights under the Covenant.

129. Second, many issues inherent in the protection and realization of economic, social and cultural rights are of such a perceived nature that most States are wary of making explicit public commitments towards their realization. For instance, in spite of a continuing international emphasis on the desirability of developing "benchmarks" or setting minimum standards for each of the rights found in the Covenant, few States have actually undertaken this necessary task. In this regard a point made in the Limburg Principles cannot be overemphasized: "States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all". 102/ A large number of countries clearly and perpetually neglect this obligation.

130. Third, and relatedly, although the Committee on Economic, Social and Cultural Rights has repeatedly requested States parties to the Covenant to outline specific difficulties they have encountered in achieving the realization of economic, social and cultural rights, this remains the exception rather than the rule. This is perhaps unsurprising, but raises questions regarding the duty to act in good faith in fulfilling the duties enshrined in the Covenant.

131. Fourth, serious attention should be paid to utilizing existing procedures found in the human rights treaties addressing economic, social and cultural rights. States might review the options open to them under the various inter-State complaint mechanisms, with a view to rediscovering their potential vis-à-vis violations of economic, social and cultural rights in other States parties. Likewise, the Economic and Social Council could seek to utilize its powers under article 19 of the Covenant to submit States' reports to the Commission on Human Rights for general recommendation and future study.

132. The Commission should seriously consider developing the will and means of responding to States reports and, if necessary, request the Economic and Social Council to instigate such processes. The options under article 21 of the Covenant should also be resurrected, such that the Council actually submits comprehensive reports with recommendations of a general nature to the General Assembly concerning progress in the implementation of the Covenant. The 1503 resolution procedures should be expanded to include consideration of gross violations of economic, social and cultural rights. The continued non-use of these existing procedures by organs which have them at their disposal, will serve only to maintain economic, social and cultural rights at their comparatively low level of serious consideration.

L. Conclusion

133. The aforementioned factors and surely many others continue to thwart the full realization of economic, social and cultural rights. Viewed in their totality these barriers indicate the vast distance between the global pursuit and recognition of these rights and their actual fulfilment. They reveal some of the conceptual leaps in perception required from the human rights community in grasping these negative factors and the necessity of transcending purely legalistic approaches towards economic, social and cultural rights. Unless a much broader view of the nature of the forces blocking the realization of these rights is taken, there is little chance of today's less than ideal situation improving in the future. For without a continuing reanalysis of why 40 years of "development" have failed to attain at least minimum subsistence rights for everyone, and an acknowledgment of this shortcoming, the forecast for the future will be far from favourable.

134. The need for a unified, compassionate and people-based approach towards the overall satisfaction of economic, social and cultural rights, built on a solid foundation of international solidarity, has perhaps never been more urgent than it is today. At the same time, the human, technological and resource capacities available have never been more capable of satisfying these rights. Clearly, the issue is no longer one exclusively of supply, but one of distribution, fairness, wherewithal and prioritization. But without a solid reorientation of the global political economy towards the sustainable realization of economic, social and cultural rights for all, this undeniably attainable and honourable goal will face the same dubious fate it has encountered since the founding of the United Nations 47 years ago.

135. As poor as the outlook for economic, social and cultural rights may be, there are some promising signs related to the acknowledgement of some of the more pressing barriers to the realization of these rights, as well as corresponding new perspectives and policies geared towards treating these rights with more seriousness than has generally been the case in the past. The renewed approach to poverty reduction by the World Bank, the emphasis on human development by UNDP, and a rapidly growing awareness of the interrelationships between the environment, military expenditure, the inherent limits of the market and additional factors related to the fulfilment of economic, social and cultural rights each represent laudable initiatives and deserve support from the human rights community.

136. We would be mistaken, however, to vest too much faith in these and other generally positive initiatives aimed at eroding some of the more substantial barriers to these rights. The prevailing nature of political power, control over resources, skewed levels of consumption and other issues remain overlooked, or at best under-emphasized. We can all recall the optimism of the 1950s and 1960s regarding international economic development and the hopes associated with decolonialization built on a solid foundation of economic growth and global integration. Our memories are still fresh of the positive emphasis placed on the satisfaction of basic needs and redistribution through economic growth widely advocated during the 1970s. We all remember, and still encounter the effects of the deadly shift of the 1980s towards structural adjustment as the means to ensuring the economic conditions needed to fulfil social needs. And now, we can visualize the emerging consensus on poverty alleviation and human development as two of the primary issues of the 1990s.

137. Yet as visions of development continue to change and as greater and greater numbers of people claim to have the answers to the main dilemmas of the human condition, why should we look to the 1990s with more inspiration than previous decades? Will the renewed attention to poverty alleviation really result in a growth in that percentage of humanity who are able to live successfully in conditions in which their economic, social and cultural rights have real significance? Will Governments collectively accept the challenge of real, people-based development and for the first time in history actually reduce unnecessary human suffering? Will economic, social and cultural rights once and for all truly take on the practical significance with which the law theoretically treats them?

138. Unquestionably, much remains to be achieved. Some modest proposals aimed at eroding some of the barriers confronting economic, social and cultural rights will be discussed in the last two chapters of this report.

III. THE EVOLVING ROLE OF THE INTERNATIONAL FINANCIAL INSTITUTIONS

139. The evolution of the policies of the international financial institutions and their relevance to the realization of economic, social and cultural rights was discussed in the preliminary report 103/ and in the second progress report 104/ submitted by the Special Rapporteur. The intent of the present section is to discuss several new developments in the policies of the main international financial institutions, namely the International Bank for Reconstruction and Development and the International Monetary Fund. In this it should be borne in mind that the World Bank represents the largest single source of the development finance on Earth 105/, and that, consequently, its policies inevitably affect the realization of economic, social and cultural rights. IMF which is not a development finance agency but rather an institution concerned with short-term balance of payment difficulties nevertheless affects the realization of economic, social and cultural rights: (a) through policies reflected in IMF conditionality and (b) through the close cooperation between IMF and the World Bank in designing broad policy frameworks to be applied by a great number of States. Although indirect, the role of these institutions with regard to the realization of economic, social and cultural rights is very significant.

140. In recent years and, in particular since the publication (in 1990) of its World Development Report, the World Bank has placed considerable emphasis on the policy of poverty reduction. Some of the most important aspects of this policy orientation will be discussed below. However, before that it should be emphasized that the policy of poverty reduction critically depends on the general economic situation and that it represents only a part of a broader whole of (a) economic reality in general and (b) policies pursued by the World Bank, which remains a financial institution.

141. The following passage from the most recent World Development Report offers an important illustration of the current assessment by the World Bank of the problem of poverty as part of economic reality:

> "... the number of poor in Asia would continue to decline, and the adverse poverty trends in Latin America and Eastern Europe would be reversed with economic recovery in those regions. Sub-Saharan Africa is the only main region in which the situation is expected to deteriorate: with increases in the proportion of the population in poverty, the number of poor would rise by about 9 million a year, on average. By the end of the decade about one-half of the world's poor will live in Asia and one-quarter will live in Sub-Saharan Africa.
>
> "It is sobering to compare these estimates with those in World Development Report 1990. That report identified a path of poverty reduction that would reduce the absolute number of poor in the world by 300 million between 1985 and 2000. The path was presented to illustrate what could be accomplished with sound policies in both developing and industrial countries. Sadly, that target appears no longer feasible, partly as a result of the severity of the current recession and disappointing progress in the 1985-1990 period. Even under fairly hopeful assumptions about economic recovery in the rest of the decade, the absolute number of poor in the world at the turn of the century will probably be higher than in 1985." 106/

142. Despite the problems referred to in the preceding paragraph it would seem necessary that the World Bank continue its policy orientation concerning the reduction of poverty. The major elements of this orientation have been explained in a number of World Bank documents in the past two years and are summarized in the subsequent paragraphs.

143. A recent World Bank document defined the Bank's approach to the problem of poverty in the following way:

> "The 1990 World Development Report demonstrated that poverty has declined in countries that adopted a two path approach. The first part of the approach requires the encouragement of broad-based economic growth. Policies that make productive use of the poor's most abundant asset - Labour - are consistent with rapid growth and reduced poverty. The second part requires the provision of social services, especially primary education, basic health care, family planning and nutrition to improve living conditions and increase the capacity of the poor to respond to the income-earning opportunities arising from economic growth." 107/ (Emphasis added.)

144. The above programme requires effectiveness of economic management (short-term and long-term) in generating growth that makes productive use of labour; adequate government efforts to provide basic social services to the poor and appropriate, reliable and affordable social safety nets. 108/

145. Economic growth in itself cannot solve the social problems affecting the poor. Special efforts are needed and they necessarily involve public expenditure and, in particular, fair and just distribution of expenditure between poor and non-poor.

> "Avoiding excessive urban bias (most of the poor are rural) and protecting or expanding basic services (primary education, basic health care, family planning, extension services, roads) are the first steps in increasing the effectiveness of public expenditures." 109/

146. Social services must be adequate both as a part of "productive investment" and as part of public spending. Both aspects require careful monitoring and permanent analysis of the actual effects. The same applies to social safety nets, systems of food subsidies, etc. 110/

147. The most interesting aspect of this approach is the link between the appropriate policies designed by States and the Bank's lending. According to the World Bank the volume of lending should be linked to country effort to reduce poverty:

> "If a country's policies, programmes, and institutions are broadly consistent with the two-part strategy, the prima facie case for substantial Bank support is strong, for the evidence in the World Development Report shows that external assistance is most effective in such countries. But if a country is not committed to such policies, external assistance is unlikely to be effective, and significant flows of Bank assistance cannot be justified. Intermediate cases would warrant intermediate levels of assistance." 111/

148. In 1991 the World Bank developed further instruments designed to implement the policies of poverty reduction, including Operational Directive 4.15 on Poverty Reduction and the comprehensive Poverty Handbook, which provide specific contributions to the international debate on poverty reduction and indicate the degree to which these issues have been institutionalized within the Bank. The Directive specifically addresses the issue of the social cost of adjustment and requires that "Bank-supported adjustment programmes include measures to protect the most vulnerable from declines in consumption and social services - with particular attention paid to food and nutritional security - in the context of an agreed public expenditure programme." 112/

149. The Directive envisages specific support for poverty-reducing operations and a comprehensive methodology of monitoring country performance on poverty reduction, the relationship of public expenditure to poverty levels, poverty profiles and indicators, etc. Once developed and available, this type of information would be useful also in the assessment of the implementation of human rights standards concerning poverty-related issues. Human rights bodies could benefit from the use of such information in carrying out their

monitoring responsibilities. The public expenditure reviews and poverty assessments included in the Poverty Handbook which relate to a number of relevant issues, including whether or not social safety nets exist in countries and, if so, what form they take, could be particularly useful to the human rights bodies in monitoring State compliance with economic, social and cultural rights.

150. The new emphasis on social safety nets within the strategies to reduce poverty "for the most vulnerable segments of society, who cannot work" represents a large step in the direction of recognizing the importance of basic subsistance rights for all persons, and if interpreted broadly, could serve usefully to augment the recognition of the importance of human rights in this area. The principal issues for assessing the effectiveness of the safety net, according to the Handbook, are provisions for meeting essential food, health and shelter requirements, each of which represent key components of economic, social and cultural rights as defined in the Universal Declaration of Human Rights and in the Covenant on Economic, Social and Cultural Rights. In addressing the practical implications of safety nets, however, the Bank should aim to ensure that such provisions are sustainable, comprehensive and that they are used as an additional instrument necessary to uphold human development rather than as a substitute for it.

151. While measuring the incidence of impoverishment through the use of "poverty lines" and thereby statistically separating "the poor" from "the non-poor" can be a useful tool for poverty analysis and policy design, care should be taken to ensure that such measurements do not negatively affect the segment of population just above the poverty line. A large number of people live technically above the poverty line, yet in conditions virtually the same as those classified as poor. Moreover, policies designed to assist the extremely poor and poor should be carried out in a way which would take into account also the need to assist other marginalized groups which are not technically labelled as poor. Care should be taken that those categorized as "non-poor", even though they may be as unable to procure basic subsistance needs as the "poor" (albeit having slightly higher incomes), are not left out of priority programmes geared towards the full realization of economic, social and cultural rights.

152. These recent poverty reduction initiatives are an important and visionary innovation and time will show whether they will be actually pursued. This question is important, given the fact that the most recent estimates published by the World Bank express hesitation regarding the attainability of the poverty reduction goals defined in earlier documents. 113/ This problem should not be underestimated. Monitoring poverty, developing the notion of a poverty line for different countries, producing poverty profiles for more than one hundred developing countries and delineating successful anti-poverty policies from those which have failed are tasks of considerable complexity and magnitude. Moreover, it should be kept in mind that the World Bank remains a financial institution and that repayment of the loans provided by the Bank remains its basic concern. Therefore, the importance of the recent evolution of policies pursued by the World Bank must be assessed against the background of this complex reality, which will make the process of realization of these policies difficult.

153. It is natural that the World Bank focuses on the economic side of the issue and on the effectiveness of the policies in question. The human rights dimension, which is implicitly present in such an approach, could certainly be developed further. In this connection, the Special Rapporteur wishes to recall the contents of paragraphs 124 to 147 of the second progress report in which a brief presentation of the impact of adjustment on the realization and enjoyment of selected economic, social and cultural rights is provided. 114/ remedying the adverse effects of adjustment referred to in that context should be among the objectives of policies based on the "two-part strategy" pursued by the Bank.

154. Another aspect of the realization of the "two-part strategy" of the Bank relates to the role of the Bank in designing economic adjustment programmes. This task involves a number of United Nations agencies and IMF and the World Bank. The need to improve coordination and to put greater emphasis on the social aspects of adjustment programmes is increasing. At a seminar organized in October 1990, by IMF, the Bank and 12 United Nations agencies, the need for enhanced cooperation and for increasing emphasis on the social aspects of adjustment was generally recognized. 115/ "Social concerns must be addressed at the design stage of economic adjustment programmes and not tacked at the end as some sort of 'social sweetener'". 116/

155. The question of how the international agencies should approach this task is particularly important and the following idea provides a point of departure in the search for such an approach:

> "While Governments' overall development plans and policies will continue to provide the basic framework for orienting the activities of the organizations and agencies of the United Nations system, policy framework papers (PFPs) and similar documents could contribute an appropriate framework for policy and project formulation and execution, especially as PFPs begin to pay more attention to structural, sectoral and social issues." 117/

156. The real situation in many countries which have undertaken adjustment programmes is that the Policy Framework Papers, jointly prepared by IMF and the World Bank, have become the only comprehensive documents that reflect the declarations of both short-term and longer-term government policy. 118/ Therefore, the preparation of PFPs could become a major area on which the action on economic, social and cultural rights should concentrate. The following conclusion reached at the aforementioned seminar is relevant in this connection:

> "... The agencies' contribution would be most effective at the earliest stages of discussion between IMF and national authorities. At this stage, a bilateral and informal exchange of views between their staffs should be encouraged. In particular, the agencies could provide relevant data, analyses, and other information on sectors within their area of competence; identify vulnerable groups and the impact of previous adjustment programmes or policies; and suggest matters for consideration in the next round of discussion with the authorities." 119/ (Emphasis added.)

157. In addition to the emphasis placed upon the social aspects of adjustment programmes there are also other elements of the policy pursued by IMF which are potentially significant for the realization of economic, social and cultural rights. One of them relates to the fiscal policies of States which pursue stabilization and adjustment programmes, an area which has been traditionally among the more sensitive aspects of IMF activity. Fiscal policies are an important element of State sovereignty and the level of involvement of international financial institutions in these matters remains a subject of discussion. The traditional doctrine of IMF has been that its concerns expressed in the "performance criteria" by which the realization of IMF-sponsored programmes was measured should be confined to "macroeconomic variables" and that the Fund should not become "involved in the detailed decisions by which general policies are put into operation". 120/ Therefore specific prices of commodities or services, "specific taxes or other detailed measures to increase revenues or reduce expenditures would not be considered macroeconomic variables". 121/ This approach is also reflected in the 1979 guidelines on conditionality (adopted by the decision of the Executive Board of the Fund on 2 March 1979) which state that "Performance criteria will normally be confined to (i) macroeconomic variables and (ii) those necessary to implement specific provisions of the Articles of Agreement or policies adopted under them. Performance criteria may relate to other variables only in exceptional cases". The IMF Executive Board reiterated in 1990 that "questions of income distribution should not be part of Fund conditionality". 122/

158. The question of the use of fiscal policies in the context of the implementation of stabilization and adjustment programmes is directly relevant to the realization of economic, social and cultural rights. Although social aspects of adjustment and stabilization programmes are clearly recognized as important and their fiscal component inevitably relevant, "political difficulties, guidelines on conditionality, and timing concerns have prevented them being taken formally into account in Fund programmes". 123/ From the standpoint of the realization of economic, social and cultural rights, however, it seems necessary that further steps, leading to formal inclusion of issues of fiscal policies into Fund programmes, be taken. These steps should take into account both changes in various taxes and tax rates and changes in specific public expenditures, subsidies and public utility rates. Such an approach would represent a step away from the traditional doctrine of reliance on macroeconomic measures. However, this seems to be necessary if the objectives of reduction of poverty and social justice, objectives accepted both by the World Bank and IMF, are to be achieved.

159. The Special Rapporteur does not underestimate the technical and political difficulties of the approach based on the link between IMF stabilization and adjustment programmes and changes in fiscal policies (both on the taxation side and on the side of public expenditure). Therefore a gradual, step-by-step implementation of such an approach seems to be necessary. It must also be borne in mind that fiscal policies represent only one aspect within a broader policy framework which is not yet fully developed.

160. Current thinking within IMF seems to be leading towards the establishment of a global agenda for poverty reduction in the 1990s, an agenda consisting of three major items: (a) developing country policies, (b) stimulating favourable external economic conditions and (c) development of appropriate policies of development financing.

161. In the context of the realization of economic, social and cultural rights country policies represent the most interesting part of this agenda. According to the current thinking at IMF these policies should include the following main elements:

(a) Fostering of efficient and sustainable economic growth;

(b) Sound macroeconomic policies geared to preventing excessive external and domestic imbalances;

(c) Structural policies which harness market forces, social and political institutions, infrastructure and technology to the effort to reduce poverty, through increased income-earning opportunities for the poor;

(d) Investment in human capital, in particular improvement of access for the poor to basic health care, education and other social services (this represents an important aspect of the realization of economic, social and cultural rights and - in the economists' terminology - enables the poor to take advantage of the income-earning opportunities that arise as a consequence of growth);

(e) Safety nets for the poor;

(f) Improvement of participation of the poor in development, enhancement of the role of non-governmental organizations and institutional development. 124/

162. Among the elements summarized above, special attention must be paid to the question of targeted public expenditure for the poor and to social safety nets. Although general economic policies are expected to be designed in a way which would reduce the need for such measures, it must be kept in mind that when macroeconomic adjustments are severe, and sizeable real income losses are threatened for certain poor groups, additional action is required. In such cases targeted subsidies and other social expenditures may be needed to shelter the poor, and additional social safety nets may have to be introduced.

163. Subsidies for basic commodities should be targeted rather than general, since general subsidies on normal goods tend to result in large transfers to the non-poor and in an excessive level of overall subsidies. Targeting of subsidies is a complex operation which requires utilization of appropriate targeting techniques. One of the approaches is targeting certain indicators of need, such as disability, pregnancy or infancy. Targeting specific socioeconomic groups is especially well suited to ensuring adequate nutrition. The protection of these groups is also enhanced by emphasis on primary health care and hygiene education. An example in this respect is subsidizing the provision of milk to pregnant and nursing women and to children in primary health clinics.

164. Social safety nets vary in form and content. In the formal sector, contributory pension and unemployment schemes may be feasible. While the provision for normal retirement and short-term unemployment may be financeable on the basis of contributions, without recourse to budgetary finance, in an economy undergoing major structural changes leading to widespread unemployment it may be necessary to set up special income-maintenance schemes for affected workers (coupled with retraining programmes) financed through the budget. In the self-employed and informal sectors, a non-contributory safety net at the subsistence level for the elderly may be feasible. In some countries, strengthening of community- and local-level redistributive mechanisms may be cost-effective in ensuring a social safety net for vulnerable groups without family support.

165. The above illustrations of the evolution of IMF policies relating to poverty reduction and other social aspects of stabilization and adjustment programmes leads to the question of whether these elements make up a comprehensive and efficient policy framework. The actual value of any policy can be tested only against the effects it actually produces. Therefore, practical implementation will show how effective these policies are. However, it would be inappropriate to overlook the fact that the World Bank and IMF have gained important experience in the field of the social dimensions of Bank/Fund sponsored programmes. In his 1991 address to the International Labour Conference, Michel Camdessus, the Managing Director of IMF, identified the following five key principles of a growth-oriented adjustment strategy (these principles relate to the essential social requirements):

1. A medium-term perspective to contribute to lasting growth whilst avoiding excessive fluctuations in activity and employment which are especially harmful to the most vulnerable. Instead of pursuing an immediate and often illusory improvement in income, a medium-term policy should be pursued to achieve realistic increases in real income through rising productivity.

2. Instead of postponing the adoption of inevitable policies and corrective measures the IMF programmes seek to combine them into a credible whole.

3. These programmes are designed to fight inflation, "a subterfuge through which societies blindly distribute the burden of adjustment among the social partners".

4. Reduction of budget deficits. It is important that this principle is carried out with due regard to needs in the field of health and education and other related social areas which are, according to Mr. Camdessus "manifestly more productive in the strictly economic sense, not to mention their important human values, than those that finance prestige projects or overblown military activities. It is therefore quite natural that the Fund would ask national officials ... to justify these choices". Among the tasks in this field of reduction of budget deficits it is sometimes necessary to reduce subsidies and to introduce targeted subsidies in favour of vulnerable groups.

5. Structural policies become a necessary element of these programmes. An important aspect of structural reforms relates to "improvement of the administration of essential public services". 125/

166. Two elements referred to in the policy statement quoted in the preceding paragraph merit particular attention. The first is the issue of military expenditure, which often amounts to "overblown military activities". It is important that IMF has been paying more and more attention to this problem. Thus a recent study carried out within IMF led to the conclusion that "military outlays above the basic threshold of security can be designated as 'unproductive expenditure'". 126/ Moreover,

> "... from a worldwide perspective, there is a strong case for coordinated decrease in military spending which, while it may occasionally provide benefits to an individual nation, has a negative impact on the welfare of individual nations. On a worldwide basis, therefore, national military expenditures do not enhance welfare, unlike expenditures on social and economic services, [which] generally do enhance global economic welfare. A coordinated reduction of military expenditures that does not change the strategic balance will increase economic well-being in the world". 127/

167. The increased emphasis in the policy (and other) documents of IMF on the social aspects of adjustment and on the distributional aspects of policies supported by the Fund is encouraging, although it is probably too early for an assessment as to its actual effect. Nevertheless, it woud seem that those aspects of the current policies of IMF should be supported by the forums concerned with the realization of economic, social and cultural rights. Such policies are a path to increasing "available resources" for "progressive realization of economic, social and cultural rights". The question for the future is whether a systematic insistence on certain policy options, including enhanced emphasis on social aspects of adjustment policies and on decrease of military spending can be successful without a clear link betweeen them and the Fund's conditionality. As mentioned above, questions of income distribution are not a part of the Fund's conditionality (a feature which seems to be among the important constants of the IMF doctrine and its operational system).

168. The question raised in the preceding paragraph opens a broader problem area of the mandates of the international financial institutions, their specialization and the possibilities and need for their reform. The evolution of policies of these institutions over the last decades has certainly expanded the scope of their operation and has contributed to the question of how much change is possible under the existing statutes (Articles of Agreement) of these institutions and whether amendment of those statutes would seem necessary. 128/ It is clear that consideration of such questions would require a specific mandate and expertise and would not have to be directly linked to issues concerning the realization of economic, social and cultural rights. However, the policy aspects discussed in the preceding paragraphs must be among central considerations in the discussion of a possible reform of these institutions.

169. Another alternative (or complementary) line of activity for the future could be in the domain of strengthening inter-institutional cooperation within the United Nations system, including the cooperation between the United Nations human rights bodies and the financial institutions. The present report represents a modest contribution in that regard. Other and more ambitious projects could be developed in the future. One of them could be the undertaking of a detailed technical study concerning the possibilities of using human rights standards as legal criteria to be incorporated in the World Bank's lending policies. 129/ The experience gained in the process of incorporating environmental concerns into the Bank's policies and the corresponding assessment of borrowers' (i.e. States') treaty obligations as a criterion for support to proposed projects could be useful in this regard.

IV. CONCLUSIONS: THE NEED FOR NEW APPROACHES

170. It does not seem far-fetched to accentuate that the failure of Governments, and indeed virtually all models of development pursued thus far, in creating conditions whereby the society-wide enjoyment of economic, social and cultural rights has occurred, indicates the pressing necessity of new approaches towards this category of rights. While legal approaches can obviously achieve a good deal, these must be coupled with an examination of broader social trends and political realities.

171. The multi-faceted achievements of the Committee on Economic, Social and Cultural Rights represent active advancements in this area of international law. The inclusion of an additional protocol on these rights to the OAS' American Convention on Human Rights of the Organization of American States (OAS), as well as recent changes to the enforcement mechanisms of the European Social Charter are also indicative of recent steps forward. Yet as important as these legally-oriented steps are, it seems crucial (particularly for lawyers) to look beyond these issues at some of the underlying issues which require greater focus for the goal of achieving economic, social and cultural rights for everyone, everywhere. With a mandate as broad as that entrusted to the Special Rapporteur, only several of a broad range of approaches can be considered, prior to examining a lengthy list of what are intended to be concrete recommendations designed to promote the realization of economic, social and cultural rights as a whole.

A. Rediscovering the role of local government

172. The macro-dimensions of the legal issues dealt with most frequently at the international level have led many to ignore or at best under-emphasize the role played by local government in areas affecting the realization of economic, social and cultural rights. As the decision-making structures of the United Nations are exclusively comprised of national Governments this situation is perhaps unsurprising. Nevertheless, a re-discovery of the capacity of local government in satisfying States' legal obligations needs to occur. At the very least, such an emphasis provides a crucial mechanism in promoting popular participation in the development process, as well as providing a means of representing local needs at the national level.

173. How then, could re-emphasizing local government potentially lead to an improvement in the status of economic, social and cultural rights.

Re-orienting considering of city and municipal government implies expanding measures towards decentralization. As the United Nations Development Programme (UNDP) has pointed out:

> "Decentralizing social services reduces costs, because it encourages the use of local resources and often holds down administrative costs ... Decentralization usually creates an atmosphere that encourages initiative at all levels, from bottom to top. It thus promotes development that is more people-oriented, more sustainable and more relevant to people's needs and interests. 130/

174. Throughout most of the developing world, however, local governments remain excessively weak, inefficient and very often unrepresentative. And often in conjunction with the adjustment process and the overall economic crisis, local government has weakened yet further, resulting in, inter alia, declining promotion of means for encouraging participation of people in the development process. Local governments in third world cities often have one per cent of the revenue per capita available to most city or municipal governments in Europe and yet they have comparable levels of responsibility. 131/

175. While the variation in the tasks apportioned to local government varies widely, as does the degree of political and economic capacities possessed by these decision-makers, a majority of the tasks for which city or municipal governments are responsible relate directly to areas of competence linked to economic, social and cultural rights. The regulation of land, housing, pollution control, health care, schools, emergency services, trade and production, the provision of water, sanitation and garbage collection and disposal are each predominantly the tasks of local government. UNDP has found, for instance, that decentralizing control over these areas can lead to substantial cost reductions, greater efficiency and wider positive impact in areas of education, health care, water and sanitation and food subsidies. 132/

176. Caution should be exercised in this area, for there can be major drawbacks in decentralizing responsibility in this manner, such as making it more difficult to maintain and control desired quality standards for the services delivered, taking pressure off national government and re-apportioning blame to the local level, the prospect of reinforcing disparities between social groups, regions or local communities, and the risk that devolving power to the local level may provide greater powers to the local elite, who may be less responsive to those in need than central government. Nevertheless, an appraisal by the human rights community of the role of local government appears imperative.

B. Making popular participation real

177. Decades of pleas for increasing levels of participation in the development process, principles about which are included, for instance, in the 1986 Declaration on the Right to Development, have clearly yet to bear fruit.

178. According to one commentator:

"Though the World Bank claims that 'it seeks to meet the needs of the poorest people', at no stage in what it refers to as 'the project cycle', however, does it actually take time to ask the poor themselves how they perceive their needs; neither does it canvass their views on how they feel these needs might best be met. Indeed, from the identification of a possible Bank project right through to its ex post evaluation, the poor are entirely left out of the decision-making process - almost as if they did not exist". 133/

179. Even the Bank itself has recognized this inadequacy, admitting in 1988 that:

"the principles guiding beneficiary participation in Bank-financed projects have been quite abstract and of limited operational impact. Beneficiaries were not assigned a role in the decision-making process, nor was their technological knowledge sought prior to designing project components". 134/

Though non-governmental organization participation in World Bank projects has increased in the past three years, by far the greatest share of this "participation" was in project implementation, with substantially smaller emphasis being placed on design, advice, monitoring and evaluation. 135/

180. The declining capacities of the State and the resolute inability of the market or private sector, coupled with measures of adjustment, and an overall global economic decline have led to the evolution of new citizen movements, new coalitions and new political processes, all but ignored in the literature of the international financial agencies and by much of the United Nations system. Within these new movements is where real participation occurs, where much of real development takes place and where the legitimate needs of people are increasingly being demanded.

181. Much debate has taken place recently about the obvious relationship between development, democracy and human rights, implying, of course, the issue of citizen participation in all political processes associated with development. One United Nations agency has provided support in the following terms:

"An essential part of any political process to benefit the poor is a high degree of participation. Encouraging the autonomy of citizens is, indeed, an end in itself. And participation is a means to ensure the efficient provision and more equitable distribution of goods and services. If people are involved in decision-making, policies and projects tend to be more realistic, more pragmatic and more sustainable. 136/

C. Using indicators to monitor realization of economic, social and cultural rights

182. The previous three reports of the Special Rapporteur have addressed the potential role of social and economic indicators as a tool in assessing State compliance with economic, social and cultural rights. The process of incorporating indicator usage into the human rights machinery will be

addressed further in the upcoming Expert Seminar on Economic and Social Indicators and Their Use in Monitoring the Realization of Economic, Social and Cultural Rights. A working paper prepared by the Special Rapporteur and considered during the forty-third session of the Sub-Commission outlined some general principles on the use of indicators, tentative themes for the agenda of the seminar and the eventual goals of this meeting. 137/ While the inherent limitations of this approach have been recognized, this method of measuring the realization of economic, social and cultural rights has received general support.

183. The degree of seriousness which the human rights bodies have accorded indicator usage was reflected in the general discussion on indicators held at the sixth session of the Committee on Economic, Social and Cultural Rights. One issue raised on several occasions was that of the use of indicators in determining violations of the Covenant. This seems an interesting and constructive use of statistical measurements, and one which could be further incorporated into the work of all human rights bodies. Though one could envision many possible means of addressing violations in this manner, any rise in deprivation accountable to government policy and derived from indicators could be a first step towards employing this strategy. Clearly, the issue of violations of economic, social and cultural rights requires further development.

184. Towards this end, the appointment by the Commission of Human Rights of thematic special rapporteurs mandated to address specific economic, social and cultural rights could provide a useful basis for enhancing the effectiveness of existing mechanisms capable of monitoring violations of these standards. In the view of the Special Rapporteur, the issue of whether or not economic, social and cultural rights can be violated in a legal sense has been answered convincingly in the affirmative. The recent pronouncements of the Committee on Economic, Social and Cultural Rights, for instance, declaring the Dominican Republic to be in violation of the covenant represent critical and path-breaking steps in the monitoring of economic, social and cultural rights. Additionally, the Limburg Principles outline a wide range of State "failures" constituting violations of the Covenant, many of which are unquestionably infringed by a majority of the 106 States parties to the Covenant.

185. Both the upcoming Expert Seminar on Indicators and the 1993 World Conference on Human Rights could provide a venue for exploring in programmatic terms how most effectively to pursue the issue of violations of economic, social and cultural rights. It must be emphasized that approaching this issue from the angle of discrimination may serve as a useful starting point in attaining at least some degree of conceptual clarity concerning this type of violation. To apply discrimination-oriented criteria, however, it will be necessary to devote increased attention to areas of discriminatory behaviour generally ignored at the international level, in particular the grounds of social status, income level, medical status, age, property and sexual orientation.

186. Moreover, accent must be placed by the United Nations on developing means to monitor consistently and reliably violations of economic, social and cultural rights, accompanied by renewed State party commitments and

strengthened interpretation of the legal obligations found in article 2.1 of the Covenant on Economic, Social and Cultural Rights. Obviously, the eventual adoption and entering into force of an Optional Protocol to the Covenant, enabling individuals and groups to submit formal communications to the Committee alleging violations of any of the rights found in that text, would substantially assist in furthering the debate and generating helpful jurisprudence on the issue. Work on the Optional Protocol should be continued as a matter of priority, with a view to giving the rights in the Covenant practical meaning for the hundreds of millions of citizens who have yet to benefit from the norms of the Covenant.

D. Creating standards or creating space?

187. There exists a strong tendency for lawyers and others involved with the law to advocate the creation of new standards when existing standards appear to be failing in achieving a certain goal. The first progress report addressed two specific issues which the Special Rapporteur viewed as areas where new standard-setting might be beneficial, namely, land rights and the right to adequate housing. Support by members of the Sub-Commission was clearly stronger for the latter than the former area. Standards, of course, need not always imply the creation of new instruments; judicial interpretation of existing norms can also in effect refine and provide conceptual clarity to rights which are currently in place, without recourse to new texts. This raises the question of whether the United Nations human rights bodies should perhaps focus more on the creation of space, broadly defined, than on creating standards.

188. Creating political, legal, social and economic space, implying the expansion of access to space, to decision-making, to individual, family and community choices and to de facto opportunity to assert, demand and claim economic, social and cultural rights are processes at least as critical to the attainment of these rights as is the creation of new legal or quasi-legal standards. The creation of these forms of "space", however, is much less concrete, more difficult to monitor with precision and less "legal" in nature than explicit standards.

189. A number of non-governmental organizations working in the field of economic, social and cultural rights and consulted by the Special Rapporteur put forth the interesting question: Is the goal of human rights to set limits and tell the State what to do, or to free space for people to find solutions to their problems by themselves?

190. New standards, the vast majority of which are totally unknown by the people they are allegedly designed to protect, even when ratified by States, are often ignored and also provide a useful "smokescreen", effectively providing a sense of legitimization in a certain area of the law, when the State in question has no intention of complying with it. The setting of new standards without accompanying measures of monitoring and enforcement is no guarantee that the issues addressed will be adhered to and fulfilled.

191. The creation of standards almost invariably assumes the pre-eminence of the State, the market or a mixture of the two, in effect ignoring the

resources, energies, wisdom and creativity of what is often called the "third sector", civil society or the people. To illustrate the importance of the third sector, we need only note that in the cities of the developing world, housing needs are met neither by the State nor the market. In most urban areas between 60 and 90 per cent of all housing built is constructed by the people themselves, without assistance from either the State or the market.

192. Creating space implies a solid recognition of the true, but often ignored fact that a large proportion of the obligations associated with economic, social and cultural rights are negative in nature, implying the duty of the State not to intervene in certain social processes. Moreover, this point relates to the reality that many aspects of these rights do not require substantial financial expenditure by the State, but rather, a concerted attempt on the part of the State to create the conditions necessary for the eventual fulfilment of these rights. Creating space means that the issue of official "legality" should not be employed by the State to deny citizens the ability to fulfilling there own needs when the State is unwilling or incapable of doing so. This would, for instance, apply to the right to work in the context of the "informal sector" or to the right to housing in the context of the "illegal" occupation of land. The creation of space by Governments can, in fact, lead to improvements in the livelihood of citizens by simply allowing people to create their own solutions to their own problems.

193. Allowing space for personal and community initiatives related to areas comprising economic, social and cultural rights should not be taken as a subjugation of State responsibility to respect, protect and fulfil these rights. People's movements, campaigns and initiatives aimed at satisfying citizens' needs should not be discouraged by States or viewed as a threat to social stability, but as perhaps one of the few means by which people who are organized can express themselves and create solutions for their many predicaments. What this approach recognizes, however, is the frequent inability of the State to intervene sufficiently or provide the necessary resources for these rights to be widely enjoyed. The State should allow these processes to flourish, while simultaneously acting in full accordance with any international obligations concerning these rights. It is in these areas that the relevance of "freedom" enters the domain of economic, social and cultural rights.

E. Humanizing adjustment

194. The debt and overall economic crisis of the 1980s, accompanied by the adjustment process carried out with such controversy during the past decade has created both winners and losers. The fact that one social group in particular has benefited from this process while many other sectors have seen living standards decline raises a number of serious issues.

195. Recent figures concerning adjustment in Latin America and the Caribbean indicate that consumption per capita of the business sector increased by 16 per cent whereas consumption by labour declined by 25 per cent. 138/ Many sources show that the social factions which have gained most from adjustment are top executives in private business linked with foreign capital, local agents of foreign concerns, and those importers and exporters able to obtain special access to foreign exchange in a situation of scarcity. 139/

196. The European Network on Debt and Development has promoted a view, with which the Special Rapporteur agrees, that in order to make it consistent with the existing obligations of States concerning economic, social and cultural rights the policy package constituting adjustment should at a minimum address:

(a) The need substantially to increase the level and quality of popular participation, particularly by social sectors negatively affected by adjustment;

(b) The need for greater institutional transparency within the international financial institutions and levels of national government negotiating adjustment measures;

(c) The pressing need for economic adjustment in the industrialized world, which fully takes into account the international ramifications of domestic economic decision-making;

(d) The provision of the necessary level of financial and other resources, sufficient to attain the goals set by appropriately designed adjustment packages;

(e) The need to implement a truly case-by-case approach to adjustment programme design; and

(f) The defence and extension of investment in human resource development, particularly crucial in periods of adjustment.

F. Remembering cultural rights

197. Of the five major groupings of internationally recognized human rights (civil, political, economic, social and cultural), that of cultural rights receives by far the least amount of serious attention. It is thus interesting to note in this regard that the Committee on Economic, Social and Cultural Rights will consider a draft general comment on cultural rights at its seventh session later this year, which may provide clarity and substance to these often ignored, yet central, human rights.

198. In terms of overall respect for human rights, cultural rights, in particular the increasingly discussed right to cultural identity, clearly require further incorporation into the global human rights paradigm. The rights of indigenous peoples, peoples under foreign occupation, migrant workers, ethnic minorities' or foreign residents in countries other than their own, have significant (and often controversial) cultural dimensions. The centrality of the right to culture is obvious, for instance, with regard to the rights of indigenous peoples. Without affording full guarantees for their cultural rights, including the right not to assimilate and the right to cultural autonomy, the protection offered to indigenous peoples by other rights can become practically meaningless. As Rodolfo Stavenhagen states:

> "Only if collective ethnic minority rights are recognized as such, and specifically as human rights, can such communities survive in environments that are often hostile to their very existence and

> survival ... If minority cultures have any role to play in the contemporary world, then their rights must be actively fostered and not only passively and reluctantly protected. Insofar as this is a question of human rights, only the minority ethnics themselves should be empowered to decide if or to what extent they want their cultures, societies, values and identities to survive in a rapidly changing world. 140/

199. Devoting more attention to cultural rights may lay the foundation for dealing more constructively with issues such as: the system of cultural integration contrasted to policies of multiculturalism; the relationship between the rapidly advancing internationalization of culture and the right to maintain cultural autonomy; how foreign forces often quash cultural rights in territories they occupy, seeking to substantiate control, including cultural domination; the impact of population transfer upon the enjoyment of cultural rights; and the negative effects of disavowing cultural attributes in the development process. Preventing the expression of cultural rights, through limitations on religious practices, language, wearing traditional clothing, housing and in the education sphere, not only denies the exercise of a core human right, but also tends to create social tension and disarray.

200. The relationship between the expression of culture and the full realization of additional, economic and social, rights has been recognized both in the context of the right to food and the right to adequate housing as constituting a key component in the definition and eventual fulfilment of these rights. The study on the right to adequate food as a human right explicitly stated that "food must be ... culturally adequate in the context of prevailing food patterns". 141/ Whereas General Comment No. 4 on the Right to Adequate Housing, adopted in 1991 by the Committee on Economic, Social and Cultural Rights, expressed the principle in the context of defining housing adequacy:

> The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed and that they should ensure, inter alia, modern technological facilities, as appropriate. 142/

201. Though political, economic and development processes often ride roughshod over cultural heritage, cultural practices and the like, the time for the human rights community to take a stand supporting the right to culture is surely upon us. The relationship of culture to people being able to live a life of dignity and self-respect is beyond any dispute. Likewise, the cultural manifestations of many additional human rights, including food and housing, are clear. Rights associated with culture require inclusion into the human rights programme of the United Nations, international development policies and global economic processes.

V. RECOMMENDATIONS

A. General

202. The preparation of the reports on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1989/19; E/CN.4/Sub.2/1990/19; E/CN.4/Sub.2/1991/17 and the present report) should be seen as a part of a broader process of activities of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights in this field. The above-mentioned reports contributed to the adoption of the pertinent decisions including:

(a) The decisions of the Sub-Commission to give a higher priority to consideration of economic, social and cultural rights;

(b) The appointment of special rapporteurs to carry out preliminary studies on extreme poverty and on the realization of the right to adequate housing; and

(c) The convening of an expert seminar on the role of economic and social indicators in the monitoring of the process of the realization of economic, social and cultural rights.

These and other activities should make the issues concerning economic, social and cultural rights better represented within the overall framework of the activities of the Commission on Human Rights and the Sub-Commission. This is necessary and should continue with a view to achieving a more comprehensive approach to human rights and to giving practical meaning to the concept of indivisibility and interdependence of all human rights.

203. In the preparation of the reports on the realization of economic, social and cultural rights the Special Rapporteur has endeavoured to develop the necessary contacts with a number of organs and agencies of the United Nations. Contacts have been established with the Executive Office of the Secretary-General, the Office of the Director-General for Development and International Economic Cooperation, the Committee for Development Planning, United Nations Children's Fund, United Nations Development Programme, United Nations Research Institute for Social Development, the World Bank, the International Monetary Fund, and others. The opportunity to engage in a dialogue with representatives of these bodies was beneficial to the process of preparation of the reports. The Special Rapporteur recommends that contacts between the human rights bodies and the agencies mentioned above expand and become more systematic. This process will enhance the possibilities for appropriate incorporation of human rights concerns into the activities of those agencies.

204. Contacts have also been expanded and views exchanged with the Committee on Economic, Social and Cultural Rights. Consultations were held with a number of non-governmental organizations, including the International Movement ATD Fourth World, the International Commission of Jurists and the Lawyers Committee for Human Rights. The Special Rapporteur recommends that the

activity of non-governmental organizations in the field of economic, social and cultural rights be expanded and more adequately incorporated in the activities of United Nations bodies in the field of human rights.

205. The recommendations which follow should be seen in the context of the activities referred to in the preceding paragraphs and should be understood as a contribution to a broader process of the consideration of economic, social and cultural rights. This process should be stimulated by the Commission on Human Rights and the Sub-Commission and should expand within the overall context of human rights agenda of the United Nations.

B. Recommendations concerning United Nations bodies in the field of human rights

1. Sub-Commission on Prevention of Discrimination and Protection of Minorities

206. With a view to promoting in-depth strategies for the realization of economic, social and cultural rights, the Sub-Commission should continue its practice of appointing special rapporteurs to study specific aspects of this category of rights.

207. The Sub-Commission should recommend to the Commission on Human Rights the desirability of appointing special rapporteurs entrusted with reporting on and investigating economic, social and cultural rights, with mandates similar to those of existing thematic rapporteurs.

208. Further recommendations should be addressed to the Commission on Human Rights encouraging existing and future country rapporteurs to examine consistently the situation of non-compliance by States with respect to economic, social and cultural rights.

209. The Sub-Commission should encourage the Committee on Economic, Social and Cultural Rights to forward specific recommendations to States parties to the International covenant on Economic, Social and Cultural Rights suggesting the legislative and policy changes that would be required to bring States' practice into full conformity with the provisions of the Covenant.

2. Commission on Human Rights

210. The Commission should consider the appointment of thematic rapporteurs dealing with specific economic, social and cultural rights. It should examine and take action on recommendations emanating from the Committee on Economic, Social and Cultural Rights. The Commission should forward its views to the Committee on Economic, Social and Cultural Rights as to the practical feasibility of drafting an optional protocol to the International Covenant on Economic, Social and Cultural Rights affording individuals and groups the right to submit communications alleging non-compliance by States parties, whether by act or omission, with the provisions of the Covenant.

3. Human rights treaty bodies

211. The Committee on Economic, Social and Cultural Rights should (i) discuss further the exigencies of the eventual adoption of such an optional protocol to the Covenant on Economic, Social and Cultural Rights; (ii) increase the effectiveness of the reporting and monitoring process, through more publicity about acts or omissions carried out or tolerated by States parties that are viewed by the Committee as inconsistent with the Covenant; (iii) offer precise suggestions and recommendations to States parties with a view to assisting them in the fulfilment of their obligations under the Covenant. Such suggestions and recommendations could be included in the concluding observations by the Committee on the reports of the States parties; (iv) systematize and consolidate the use of indicators in the monitoring process, both on a right-by-right basis and with respect to more pervasive themes. Committee members should be encouraged to participate in the expert seminar on indicators to be convened in accordance with the pertinent decisions of the Commission on Human Rights; (v) promote, in cooperation with the Centre for Human Rights, intergovernmental and non-governmental organizations and research institutes, an agreed system for recording, storing and making accessible for use legal and other interpretative material relating to international instruments on economic, social and cultural rights; (vi) recommend to the Economic and Social Council areas it considers appropriate for future standard-setting.

212. The Human Rights Committee should consider the adoption of additional general comments on articles 6, 12 and 26 with specific regard to the implications for the realization of economic, social and cultural rights of these articles, based on recent jurisprudence. Moreover, expanded coverage could be given to the economic, social and cultural aspects of alleged violations of articles 6, 12 and 26 in the context of proceedings under the Optional Protocol to the International Covenant on Civil and Political Rights.

213. The Committee on the Elimination of Racial Discrimination should pay particular attention to the relationship between racial discrimination and the realization of economic, social and cultural rights. In this respect, due regard should be given to consider seriously the communications alleging violations of the rights contained in article 5 (e) of the Convention on the Elimination of All Forms of Racial Discrimination. Views could be exchanged with other treaty bodies on measures the Committee considers to be central in eliminating discrimination with respect to the realization of economic, social and cultural rights.

214. The Committee on the Elimination of Discrimination against Women should consider adopting a concise statement or assessment concerning the predominant areas of discrimination faced by women with regard to the enjoyment of economic, social and cultural rights. Suggestions could be made concerning methods aimed at eradicating such practices. Such an assessment could be useful in assisting other treaty bodies in more effectively carrying out their responsibilities.

215. In carrying out its monitoring responsibilities, the Committee on the Rights of the Child should place due emphasis on the economic, social and cultural rights of children, as contained in the Convention on the Rights of the Child.

216. The regional human rights bodies of the Council of Europe, the Organization of African Unity and the Organization of American States should provide information concerning the performance of States in the realization of economic, social and cultural rights to bodies such as the Committee on Economic, Social and Cultural Rights. A compilation of existing jurisprudence and other activities in the field of economic, social and cultural rights by these bodies could assist in expanding awareness of the issues.

4. Centre for Human Rights

217. The Centre for Human Rights should:

(a) Continue its efforts aimed at strengthening cooperation with United Nations agencies dealing with issues pertaining to economic, social and cultural rights;

(b) Carry out a comparative survey within the United Nations system to determine which departments, commissions, committees and other bodies had a mandate bearing directly upon economic, social and cultural rights, with a view to a better focus on the human rights aspects of these issues;

(c) Ensure coordination of the responsibilities of its staff having mandates relating to economic, social and cultural issues. To this end the resources of the Centre should be increased to enable adequate staffing to cover the volume of assignments relating to human rights and economic, social and cultural issues;

(d) Expand its reference library to include all relevant documentation relating to the realization of economic, social and cultural rights. Exchange of information should be pursued with the relevant regional organizations and institutions. Such a reference library should be adequately staffed and provide facilities to enable the documentation to be consulted;

(e) Expand the advisory services programme to include more extensive assistance for the realization of economic, social and cultural rights. Steps should be taken to enhance expertise in the advisory services programme with the aim of providing practical services directly related to these rights;

(f) Provide the assistance, both financial and otherwise, required to enable members of the Committee on Economic, Social and Cultural Rights to participate in national training seminars on the preparation of States' reports, as stipulated in the Covenant on Economic, Social and Cultural Rights;

(g) Examine the possibilities of creating an easily accessible human rights case law/jurisprudence database, containing updated compilations of the relevant data, decisions and views of national and international bodies. Such a system could greatly enhance the efficiency of the working methods of staff, treaty bodies and other system users;

(h) Continue its research and work aimed at determining the degree to which domestic laws and policies have been subject to review or amendment within States on the basis of obligations assumed under the International Covenant on Economic, Social and Cultural Rights;

(i) Devote the necessary resources to the preparation of basic policy guidelines on structural adjustment and economic, social and cultural rights. Once completed, such guidelines could serve as a solid basis for strengthening dialogue between the Centre and the international financial institutions;

(j) Organize seminars for an exchange of views between human rights experts and representatives of the international financial institutions;

(k) Ensure full and adequate coverage of the issues surrounding economic, social and cultural rights at the 1993 World Conference on Human Rights, in accordance with decisions taken by the Committee on Economic, Social and Cultural Rights at its sixth session. Specific emphasis should be placed on enforcement, implementation and justiciability of economic, social and cultural rights.

C. Recommendations concerning States

218. The Special Rapporteur believes that, in accordance with the resolutions of the General Assembly and the Commission on Human Rights, States which have not yet done so should be encouraged to ratify the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments. Corresponding legislation, policies and programmes should be adopted accordingly and the process of implementation strengthened. In this connection, special attention should be given to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

219. States parties to the International Covenant on Economic, Social and Cultural Rights should attach particular importance to the preparation of their reports in accordance with articles 16 and 17 of the Covenant and taking into account the revised general guidelines on reporting and the general comments prepared by the Committee on Economic, Social and Cultural Rights.

220. The reporting obligation should be utilized as a process through which the realization of economic, social and cultural rights can be assisted. The various functions and phases of the reporting process, such as initial review, monitoring, policy formulation, public scrutiny, evaluation, identification of problems and exchange of information, should be pursued in a systematic and coherent manner. Preparation of reports should be timely and used as a means for streamlining policies related to the realization of economic, social and cultural rights.

221. The widest possible participation by citizens, community-based organizations and non-governmental organziations should be encouraged by States in the process of preparing and discussing the reports. These reports should be widely publicized within the States parties to the Covenant, with a view to promoting national dialogue as well as allowing citizens to examine

the reports. Excerpts from States' reports should be disseminated through the mass media as a means of facilitating greater public involvement in the reporting process.

222. The reports should provide a coherent picture of the status of the realization of economic, social and cultural rights in each reporting State. In this context, particular attention should be paid to the development and analysis of coherent sets of economic and social indicators, the establishment of "benchmarks" of progress and of appropriate methods of legislative and policy review.

223. The emerging principle that minimum core obligations concerning economic, social and cultural rights exist and should be identified has to be promoted in the reporting process with the view to ensuring the satisfaction of basic levels of achievement of each of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights. In this connection, particular attention should be paid to General Comment No. 3 (1990) on the nature of States parties' obligations (art. 2, para. 1 of the Covenant) of the Committee on Economic, Social and Cultural Rights.

224. States should establish, whenever possible, appropriate judicial or administrative review mechanisms concerning economic, social and cultural rights. The identification of core obligations of States regarding these rights should facilitate justiciability of those economic, social and cultural rights which cannot, as yet, be considered justiciable in all States.

225. All relevant policies, legislation and programmes should be adapted, as appropriate, by States parties to reflect each State's international obligations concerning economic, social and cultural rights. Within pertinent ministries, specific programmes should be developed placing explicit emphasis upon strategies, methods and means for the realization of economic, social and cultural rights.

226. In accordance with the obligations arising from the Covenant and from other instruments in the field of economic, social and cultural rights, patterns of public spending should be analysed by States parties. This should include an in-depth consideration of the four relevant ratios suggested in the Human Development Report (1991), namely the public expenditure ratio, the social allocation ratio, the social priority ratio and the human expenditure ratio. Efforts should be made by States to achieve a rate of 5 per cent within the human expenditure ratio, that is to say 5 per cent of national income should be diverted to human priority concerns. Public spending must be consistent with the degree to which economic, social and cultural rights remain unrealized in a given country.

227. Practical measures aimed at reducing income disparity should be taken by States as a fundamental means for ensuring society-wide enjoyment of economic, social and cultural rights. Sustained and dedicated efforts are necessary to distribute more fairly both land and wealth within a designated society, in particular to benefit disadvantaged groups. It is important to note, in this connection, that there is a clear correlation between the enjoyment of economic, social and cultural rights and systems which seek to ensure an

equitable distribution of income. Convincing efforts should also be made by States to increase the percentage of public revenues derived from measures of taxation (currently, some 10 per cent in developing countries and over 30 per cent in industrialized countries) and to promote the realization of economic, social and cultural rights.

228. In pursuit of the policy objectives mentioned in the preceding paragraphs, States should pay particular attention to the most disadvantaged groups and the extremely poor. In this connection, it is necessary to bear in mind that extreme poverty leads to the exclusion of the affected persons and to their consequent inability fully to realize their human rights. States should develop appropriate strategies aimed at reducing and ultimately eradicating extreme poverty. Such strategies should be the subject of wide public debate and be implemented at all levels including, in particular, the local level.

229. In the context of economic adjustment or stabilization measures, whether carried out alone or in cooperation with the international financial institutions, States should ensure that socially disadvantaged groups do not suffer disproportionately from the measures employed. The human impact of adjustment, particularly measures affecting the enjoyment of economic, social and cultural rights, should be subject to systematic review. Targeted subsidies, social safety nets and other compensatory measures, consistent with "adjustment with a human face" and measures for poverty alleviation and eradication, should be applied.

230. International cooperation and assistance represent an important potential for strengthening the policies and programmes of the developing countries aiming at a higher level of realization of economic, social and cultural rights. It is necessary to examine continuously existing policies of development assistance with a view to expanding the proportion of development assistance committed to human priority areas and social sectors. The Human Development Report (1990) offers particularly useful guidance in that regard. In the context of further evaluation of development assistance policies consideration should be given to the need for debt relief, where necessary, and for debt reductions for developing countries based, inter alia, on the global commitment to the realization of economic, social and cultural rights.

D. Recommendations concerning international financial institutions

1. World Bank

231. In general, the World Bank should be encouraged to strengthen and further develop its policies relating to poverty reduction and policies intended to address the social aspects of adjustment. In this context, the World Bank should be sensitive to the pronouncements of the human rights bodies of the United Nations and should gradually incorporate human rights criteria in its work at all stages, including in project and policy lending, preparation of policy guidelines, as well as in project and policy appraisal, monitoring and assessment.

232. A study concerning the possible methods of incorporating human rights criteria in the work of the World Bank should be undertaken, either by the Commission on Human Rights or by the Commission and the World Bank cooperatively.

233. The participation of persons and groups particularly affected by the projects and policies supported by the World Bank is of particular importance, both for the success of policies and projects and for the realization of human rights. Participation should be facilitated throughout all project cycles. In this context, the role of local and community-based non-governmental organizations is of particular importance, as is the access of the people concerned to legal measures and to decision makers. Special research should be undertaken with a view to ascertaining the actual contribution of the various forms and methods of participation to the overall success of the project or policy concerned. These activities should be developed in a manner which would provide for the necessary experimentation.

234. The World Bank and the borrowers should take the necessary measures to inform properly the people to be affected by the Bank-supported projects and policies. The public must be given an appropriate opportunity to provide their own views prior to final decisions being made, with plan modifications remaining a possibility at any time. The World Bank should also develop further various methods of consultation with non-governmental organizations at the international level.

235. Project and policy auditing and evaluation by independent persons and groups should be increased and further developed. In this context, particular attention should be paid to the impact of programmes and policies on economic, social and cultural rights.

236. Special measures should be taken to ensure that policies, programmes and projects supported by the Bank do not adversely affect economic, social and cultural rights. In this context, the use of targeted subsidies and the development of carefully designed social safety nets should be given priority. Furthermore, policies concerning user charges to pay for public services should be reviewed. When user charges are employed or encouraged, caution should be exercised that they do not inhibit the enjoyment of economic, social and cultural rights. Policy measures should be selected and an appropriate policy mix should be developed so as to minimize the adverse effects on economic, social and cultural rights while retaining the economic viability of the policies, programmes and projects concerned.

237. Experience has shown that certain major projects often create a disproportionately high level of adverse environmental, social and human rights effects. In general, it should be suggested that instead of certain large-scale prestige projects, emphasis be placed on small-scale, environmentally and socially beneficial projects, with a view to encouraging long-term and sustainable economic growth. Particular attention should be paid, in this connection, to the need to ensure the effective participation and the appropriate economic role of women in the development and realization of such projects.

238. Cooperation between the World Bank and the human rights organs of the United Nations should be strengthened and should include the participation of World Bank representatives at the meetings of the human rights organs concerned with the realization of economic, social and cultural rights. The World Bank should consider, together with IMF and the Commission on Human Rights, the possibility of organizing an expert seminar on the role of the financial institutions in the realization of economic, social and cultural rights.

2. International Monetary Fund

239. The International Monetary Fund should endeavour to assure that relevant social concerns are adequately addressed at the design and subsequent stages of the structural adjustment process. Consultations with the other United Nations agencies concerned with social matters, relevant national ministries and representatives of citizens should be carried out at the earliest possible stage of the adjustment process in order to mitigate the preventable or negative social aspect of adjustment.

240. The Policy Framework Papers represent, in many cases, the major policy documents of countries undergoing the process of adjustment. Therefore, it is necessary that the concerns related to the realization of economic, social and cultural rights are included in the Policy Framework Papers.

241. In the process of designing and realizing the IMF-supported policies of stabilization and adjustment, particular attention should be paid to the issues of income distribution with a view to decreasing the growing disparities. Furthermore, the fiscal policies of States should evolve in a manner which would be beneficial to the realization of economic, social and cultural rights. IMF should assist and stimulate talks aimed at developing their policies in that direction.

242. The existence of country-specific social safety nets and targeted subsidies within States should be viewed as an important component of the fiscal and adjustment activities and should be measured, inter alia, against the existing human rights obligations of States. Such safety nets and subsidies should be guaranteed at such a duration and level that the core minimum entitlements of all citizens, in terms of economic, social and cultural rights, are met. Subsidies will remain an important means by which Governments facilitate a significant part of the realization of economic, social and cultural rights of their citizens.

243. Cooperation between IMF and the human rights organs of the United Nations should be strengthened and should include the participation of the IMF representatives at the meetings of the human rights organs concerned with the realization of economic, social and cultural rights. IMF should consider, together with the World Bank and the Commission on Human Rights, the possibility of organizing an expert seminar on the role of the financial institutions in the realization of economic, social and cultural rights.

E. Recommendations concerning non-governmental organizations

244. International non-governmental organizations should be encouraged to increase their contributions to the United Nations organs dealing with economic, social and cultural rights, in terms of information and detailed analyses of the degree to which economic, social and cultural rights are realized in different settings. Such analyses should provide insight into the different problems of the realization of economic, social and cultural rights and the root causes of these problems.

245. National and local non-governmental organizations should strengthen their promotion of awareness of the existence of economic, social and cultural rights, particularly among low-income social groups. This could include the distribution and translation of the relevant human rights instruments and could be accompanied by simple handbooks explaining the legal significance of these texts and the methods of their enforcement.

246. National and local non-governmental organizations should also undertake field research concerning the realization of economic, social and cultural rights, promote the use of available legal remedies and prepare critical observations regarding States' reports on the realization of economic, social and cultural rights. Their participation should be expanded so as to include efforts to increase the general public's awareness of economic, social and cultural rights and active participation in establishing new legislation or policies affecting the realization of these rights.

Notes

1/ Louis Henkin, Introduction to "The International Bill of Rights", Louis Henkin ed., Columbia University Press, New York, 1981, p. 10.

2/ Vladimir Kartashkin, "Economic, Social and Cultural Rights", in The International Dimensions of Human Rights, Karel Vasak and Philip Alston, eds. vol. I, UNESCO 1982, p. 112.

3/ The term used by Antonia Cassese in International Law in a Divided World, Clarendon Press, Oxford, 1986, p. 297.

4/ Ibid.

5/ Ibid, pp. 301, 307 and 308.

6/ For some references to the theoretical interpretation and practical reasons, see Cassese, op. cit., pp. 300-311.

7/ It goes without saying that the nature and scope of change in Eastern Europe cannot be considered within this report. However, it seems to be obvious that these changes have temporarily removed economic, social and cultural rights from the political agenda in countries in that part of the world.

8/ A. Cassese, op. cit., p. 297.

9/ Oscar Schachter, "Human dignity as a normative concept", AJIL, vol. 77, No. 4 (editorial comment).

10/ L. Henkin, op. cit., p. 113.

11/ V. Kartashkin, op. cit., p. 113.

12/ Philip Alston, "Out of the abyss: The challenges confronting the new United Nations Committee on Economic, Social and Cultural Rights", in Human Rights Quarterly, vol. 9 (1987) p. 352.

13/ Ibid, pp. 352 and 353.

14/ E/CN.4/1987/17, annex.

15/ The group was convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States) in Maastricht from 2 to 6 June 1986, see Human Rights Quarterly, vol. 9 No. 2 (1987) pp, 121 ff.

16/ UNDP Human Development Report 1991, Oxford University Press, pp. 2 and 24.

17/ E/CN.4/Sub.2/1991/17.

18/ Ibid., pp. 36-50.

19/ E/CN.4/1992/2, pp. 60-62, "Realization of economic, social and cultural rights". The resolution stated, inter alia, "Concerned at the negative effects of structural adjustment programmes upon the realization of economic, social and cultural rights"; "2. Urges the international and financial institutions, in particular the World Bank and International Monetary Fund, to take greater account of the adverse impacts of their policies and programmes of structural adjustment on the realization of economic, social and cultural rights".

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21/ James Bovard, The World Bank vs. the World's Poor (1987), Cato Institute Policy Analysis No. 92, Washington, D.C.

22/ Toward Sustained Development in Sub-Saharan Africa (1984), World Bank, Washington, D.C.

23/ Ibid., pp. 40 and 44.

24/ Written submission of the International Monetary Fund, 9 September 1991 (E/CN.4/Sub.2/1991/63), p. 3.

25/ The IMF and the South, p. 38.

26/ The IMF and the South, p. 6.

27/ Jorge Schvarzer, "Opening up the economy, debt and crisis: the inescapable relationship", in The IMF and the South, 1991, Zed Press, London, pp. 69-79.

28/ Azzam Mahjoub, ed., Adjustment or Delinking: The African Experience, 1990, Zed Books, London.

29/ Richard Sandbrook, "Economic crisis, structural adjustment and the State in Sub-Saharan Africa" in The IMF and the South, 1991, p. 95.

30/ Written statement submitted by the International Monetary Fund, 9 September 1991, (E/CN.4/Sub.2/1991/63).

31/ Lords of Poverty, p. 57.

32/ Written submission of the International Monetary Fund, 9 September 1991 (E/CN.4/Sub.2/1991/63), p. 4.

33/ UNICEF, Adjustment With A Human Face: Protecting the Vulnerable and Promoting Growth, 1987, Oxford University Press.

34/ E/CN.4/Sub.2/1991/17, pp. 25 and 26.

35/ International Monetary Fund, Ten Common Misconceptions About the IMF (1990), Washington, D.C.

36/ Written submission by the International Monetary Fund, 9 September 1991, (E/CN.4/Sub.2/1991/63).

37/ See, for instance: Fragile Coalitions: The Politics of Economic Adjustment (1989, Joan M. Nelson, et al.), Transaction Books, Oxford.

38/ General Comment No. 2 (1990), "International technical assistance measures" (art. 22 of the Covenant), E/1990/23, pp. 86-88.

39/ General Comment No. 4 (1991), "The Right to Adequate Housing", (art. 11.1 of the Covenant), para. 11.

40/ UNDP World Development Report 1991, pp. 53 and 54.

41/ Ibid. pp.55-6.

42/ The IMF and the South, p.17.

43/ Politicas Habitacionales Y Ajustes de las Economias en los 80s June 1991, Ana Sugranyes and Luis E. Camacho, eds., published by CSUCA, IDESAC and SIAP, Guatemala.

44/ "Main research findings of the system in major global economic and social trends, policies and emerging issues", Report of the Secretary-General (E/1990/81), 14 June 1990, pp.15 and 16.

45/ NRC Handelsblad, 16 December 1991, p.11.

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47/ Ken Silverstein, "Cholera and Austerity" in Z Magazine, (September 1991), pp.52-56.

48/ The Poverty of Nations: A Guide to the Debt Crisis from Argentina to Zaire, 1991, Elmar Altvater, Kurt Hubner, Jochen Lorentzen and Raul Rojas), eds., Zed Books Ltd., London.

49/ UNDP World Development Report 1991, p.9.

50/ Third World Economics 1-15 August 1991, pp.9-10.

51/ EURODAD, Target '92, December 1991, p.16.

52/ Commission on Human Rights resolution 1992/9, "Effects on the full enjoyment of human rights of the economic adjustment policies arising from foreign debt and, in particular, on the implementation of the Declaration on the Right to Development", adopted by 43 votes to 2, with 7 abstentions.

53/ Ibid.

54/ EURODAD, Target '92 (December 1991), p.16.

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56/ 1990 IMF Annual Report, p. 41.

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67/ Ibid., p. 51.

68/ Hans Blomkvist, loc. cit., p. 135.

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73/ International Monetary Fund (Robinson, Byeon, Teja and Tseng), Thailand: Adjusting to Success, Current Policy Issues, Occasional paper No. 85, August 1991, Washington D.C., p. 6.

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83/ UNICEF, The State of the World's Children 1992, Oxford University Press, Oxford, p. 41.

84/ World Bank, World Development Report 1987 and The World Bank Annual Report 1991.

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93/ Human Rights Quarterly, vol. 9, No. 2, May 1987, pp. 122-135.

94/ See World Bank, "Operational Directive 4.01: Environmental Assessment", October 1991, and World Bank, Environmental Assessment Sourcebook, 1991, Washington D.C.

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100/ the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Human Rights Quarterly, vol. 9, no. 2, May 1987, pp. 122-135.

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103/ E/CN.4/Sub.2/1989/19, paras. 77-93.

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105/ The World Bank comprises the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA) and the International Finance Corporation (IFC).

106/ World Development Report 1992, "Development and the environment", p. 30.

107/ "Assistance strategies to reduce poverty", Memorandum by the President of the World Bank to the Executive Directors. Washington D.C., 1990, pp. 1-3.

108/ Ibid.

109/ Ibid.

110/ Ibid.

111/ Ibid.

112/ The World Bank Operational Manual, Operational Directive 4.15, December 1991, para. 25.

113/ See the document quoted in note 4.

114/ E/CN.4/Sub.2/1991/17, paras. 124-127.

115/ "IMF and UN agencies seek to enhance cooperation among institutions", IMF Survey, 12 November 1990, p. 341.

116/ Ibid.

117/ Ibid.

118/ Ibid.

119/ Ibid.

120/ Joseph Gold. "Conditionality", IMF Pamphlet Series, No. 31, Washington D.C., 1979.

121/ Ibid.

122/ Ibid. See also the 1990 IMF Annual Report, p. 41.

123/ Vito Tanzi, "Fiscal policy, growth and the design of stabilization programmes" in Fiscal Policy, Stabilization and Growth in Developing Countries, Mario L. Bleyer and Ke-young Chu, eds., International Monetary Fund, 1989, p. 25.

124/ These elements are found in a number of recent working documents which were prepared within IMF. During his visits to the headquarters of IMF, the Special Rapporteur had the opportunity to consult some of these documents and to discuss the issues dealt with here with a number of IMF officials.

125/ Address by Mr. Michel Camdessus, Managing Director of IMF to the seventy-eighth session of the International Labour Conference, Geneva, 10 June 1991.

126/ "IMF study examines costs of military spending", IMF Survey, 24 June 1991, pp. 193 and 203-205. The article summarizes the findings of a working paper prepared by Daniel P. Hewitt of the IMF Fiscal Affairs Department.

127/ Ibid. p. 205.

128/ For a detailed consideration of these questions, see Ibrahim F.I. Shihata, The World Bank in a Changing World, Selected essays, compiled and edited by Franziska Tschofen and Antonio R. Para, Martinus Nijhoff Publishers 1991.

129/ See Philip Alston, "Revitalising United Nations Work on Human Rights and Development", in Melbourne University Law Review, vol. 18, December 1991, p. 246.

130/ UNDP, Human Development Report 1991, p. 61.

131/ "Rethinking Local Government: Views From the Third World", Environment and Urbanization, vol. 3 No. 1, April 1991, p. 3.

132/ 1991 Human Development Report, pp. 61-65.

133/ Graham Hancock, Lords of Poverty, 1991, Mandarin, London, p. 125.

134/ Operations Evaluation Department, Rural Development: World Bank Experience, 1965-1986 (1988), World Bank, Washington, D.C. pp. 33 and 34.

135/ World Bank World Development Report 1991, p. 85, "Participation enhances project efficiency and benefits the poor".

136/ UNDP, Human Development Report 1991, p. 71.

137/ E/CN.4/Sub.2/1991/WP.3

138/ The IMF and the South: The Social Impact of Crisis and Adjustment (1991), Dharam Ghai (ed.). Zed Press, p. 21.

139/ See, for example: Akilagpa Sawyerr "The Politics of Adjustment Policies" (1988), Economic Commission for Africa, Addis Ababa (ECA/ICHD/88/29).

140/ Stavenhagen, Rodolfo, The Ethnic Question: Conflicts, Development, and Human Rights, United Nations University Press, 1990, p. 72.

141 United Nations, Right to adequate food as a human right, 1989, World Campaign for Human Rights, Study series No. 1, New York, p. 27.

142/ General Comment No. 4, Committee on Economic, Social and Cultural Rights, 1991, para. 8 (g).